



# Canadian Content

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# Canadian Content

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# Contents

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**Sarah Panjvani**

Inuit Adaptations and Adoptions Revising the Writing System.....1

**Bertille Pruvost**

Montreal’s Gay Village and the LGBTQ Community  
From Stigmatization and Disregard to Visible Living Spaces Fostering  
Legitimacy and Tolerance.....15

**Noor Bhandal**

Challenges to the Private Sponsorship of Refugees in Canada .....27

**Molly Harris**

Canada’s Place in a Hemispheric War.....41

**Emma Gunther**

The Charter V. Female Judges Which has the greatest impact on the way that  
gender and sexuality based cases are decided? .....61

**Laura Wiebe**

Access to Safe Drinking Water in Canada’s Northern Territories.....74

**Raegan Kloschinsky**

Conflicting Sovereignty: The British Imperial Project, the Creation of the Cana-  
dian State, and Indigenous Nationhood.....88

# Notes on Contributors

**Sarah Panjvani** is in her final year of undergraduate studies in Linguistics, German, and French. She is interested in learning about the relationships between identity and language, in particular how these relationships are affected by political forces.

**Bertille Pruvost** is an exchange student at McGill. She previously studied humanities at Sciences Po Paris for two years, majoring in History and focusing on both Europe and North America. She naturally chose to study in Québec, of the possible locations in Canada. Here, she has focused on Anthropology and Political Science and above all has seized the opportunity to satisfy her thirst for knowledge about Russian language and culture. She will continue to travel, and will remember Montréal for what she has found here : good music, intriguing food, vibrant communities and captivating people.

**Noor Bhandal** is a U3 Honours student in International Development Studies with a double minor in Political Science and French. Her interests lie in international affairs, domestic and foreign policy, and postcolonial feminist studies. In her free time, she enjoys hiking, peanut butter, and keeping track of all the cute dogs in her neighbourhood (not necessarily in that order). Noor will be graduating in Winter 2017 and plans to pursue a master's degree in public policy.

**Molly Harris** is a U2 student with a double major in North American Studies and History. Her passion for politics, media, and North American history from the Nixon years until present led her to the study of the American hemisphere and the hegemonic influence that the United States exerts over the rest of the Americas. She would like to thank Professors Ingrid Bejerman, Harold Waller, and Leonard Moore for inspiring her studies and equipping her with all of the necessary knowledge to develop and explore this topic.

**Emma Gunther** is a U2 student, studying in the Joint Honours Economics and Political Science program at McGill. She works as an Assistant Editor for The Grassroots Journal, which strives to stimulate dialogue about issues in international development. Her primary academic interests lie in international political economy and constitutional law. She is interested in how Canadian institutions function in-

ternally and with each other based on their respective make-ups and mandates. She takes advantage of being from Ottawa by enjoying visits to and tours of significant buildings in the Canadian federal government, and spends time researching the social history and architecture of historical homes.

**Laura Wiebe** is a third-year Undergraduate student at McGill majoring in International Development and Canadian Studies. She is also completing a minor in education. Her greatest passion is working with children and minority groups as well as hockey. Her future goals include teaching in the territories and coaching. She plans to get a bachelor of education after her undergraduate degree at McGill.

**Raegan Kloschinsky** is in her second year at McGill University. As a Bachelor of Arts and Science student, she is double majoring in History and Organismal Biology. After completing her undergrad, she plans to pursue a Masters degree in British imperial history. She currently works as a research assistant exploring conceptions and realisations of sanctuary in Canada. She is increasingly interested in exploring Canada's history, particularly in regards to indigenous relationships, in a critical, transnational context.

**Amritha Sanmugam** is in her third year studying at the MISC, as well as in the department of linguistics. She loves photography, writing, and summer picnics in the park!

# Letter from the Editors,

We are very happy to present the ninth volume of *Canadian Content*, the Canadian Studies Association of Undergraduate Student's annual journal. This edition represents a wide variety of voices, disciplines, and subjects; truly essential to any representation of Canada. The pieces you will read touch upon many of the issues facing Canadians today.

Sarah Panjvani expands the typical conversation surrounding language use in Canada from solely French and English to include Inuit writing systems. Bertille Pruvost sheds light on LGBTQ diversity in Montreal. Noor Bhandal discusses the shortfalls of private sponsorship of refugees in Canada. Molly Harris speaks to Canada's role in the hemispheric drug war. Emma Gunther discusses important advancements made for women's rights through cases presented in the Supreme Court of Canada. Laura Wiebe draws attention to the inequities of water provision within Canada, while Raegan Kloschinsky reminds us that Canada's claim to sovereignty is not uncontested. Phenomenal visuals are provided by Amritha Sanmugam representing Canada and Montreal.

International affairs reminds us that we are lucky to live in a place like Canada, but the authors bring to our attention the room for improvement. Canadian Studies is a reflective program that allows students to analyze Canada's past and look towards a better future. Each piece in this journal provides a critical examination of Canada's past and present practices.

Finally, we would like to extend our thanks to the Arts Undergraduate Society and the McGill Institute for the Study of Canada for their generous support of our journal.

We hope you enjoy *Canadian Content* 2017!

Sincerely,

CSAUS 2017





**Inuit Adaptations and  
Adoptions: Revising the Writing System**

**Sarah Panjvani**



# Inuit Adaptations and Adoptions: Revising the Writing System

## Introduction

The debate surrounding writing systems in northern Canada dates to the 1800s, when missionaries first adapted a syllabic writing system to the Inuit language. At that time, the Inuit adopted this orthography to represent their language to adapt to the presence of colonisers in their society, and syllabics have since made a lasting impression on Inuit history and identity. Today, an increased presence and importance of English in Inuit communities has raised the question of whether the syllabic writing system should be abandoned to ease comprehension of English, forcing the Inuit to face retaining their identity within a changing environment. This paper discusses the relationship between the Inuit language, the Inuit writing systems, and the Inuit identity by examining the spoken language, its orthography, and perspectives on the writing system debate.

## Language in Northern Canada

### The Inuit Language

The Inuit language is spoken from north-western Alaska to Greenland, passing across northern Canada in the Inuvialuit region of the Northwest Territories, Kitikmeot, Kivalliq, and Baffin regions of Nunavut, Nunavik region of Quebec, Nunatsiavut region of Labrador, and on the west and southeast coasts of Greenland.<sup>1</sup> It is one of the Eskimo languages, along with the Yupik languages<sup>2</sup> and the now extinct Sireniki language.<sup>3</sup> The Eskaleut family also includes the Aleut language and Unangax.<sup>4</sup> The Inuit language is the most widely spoken language of the languages of this linguistic family, used by 89% of the Eskaleut language speakers.<sup>5</sup>

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1. Noelle Palmer, "The Role of Translation in Linguistic Standardisation across Inuit Nunangat" (master's thesis, Concordia University, 2016), 6.

2. Anthony Woodbury, "Eskimo and Aleut Languages," in *Handbook of North American Indians*, 5, ed. D. Damas (Washington: Smithsonian Institution, 1985), 49. Woodbury explains that the Yupik languages are spoken in Alaska and Russia.

3. Louis-Jacques Dorais, *The Language of the Inuit: Syntax, Semantics, and Society in the Arctic* (Montreal: McGill-Queen's University Press, 2010), 9-10. Dorais notes that the Yupik languages consist of Central Alaskan Yup'ik, Alutiiq, Central Siberian Yup'ik and Naukanski. He also notes that the last speaker of the Sireniki language, spoken in Sireniki, Russia, died in 1997.

4. *Ibid.*, 9.

5. *Ibid.*, 27.

Table 1. Eskaleut Linguistic Family

<b>Family</b>	<b>Branch</b>	<b>Sub-branch</b>	<b>Language</b>
Eskaleut	Eskimo	Inuit-Inupiaq	Inuit
		Yupik	Central Alaskan Yup'ik
			Alutiiq
			Central Siberian Yup'ik
			Naukanski
		Sireniski	Sireniski
	Aleut	Aleut	Unangax

Source: Adapted from Palmer <sup>6</sup>

Although the language spoken in northern Canada can be classified as one language spoken by the Inuit, it is not the case that people speak in the exact same way across this vast territory. The Inuit language is a continuum of dialects, which are mutually intelligible when from regions in close proximity, but less so when separated by greater distances. Linguists have attempted to categorize these dialects, but find it impossible to draw definitive borders around them as certain characteristics of each dialectal category can be found in neighbouring dialects.<sup>7</sup> These main groups of dialects are defined by geographical region: Alaska, western Canada, eastern Canada, and Greenland. Within each geographical region the many dialects are further divided into sub-dialects, each with unique features.<sup>8</sup> These dialects and sub-dialects are nonetheless similar enough to be considered one language, and distinct from the other languages of the Eskaleut linguistic family<sup>9</sup>. They share a same basic syntactical structure, differing mostly in phonology, lexical affixes, and in morphology.<sup>10</sup>

6. Palmer, "The Role of Translation in Linguistic Standardisation across Inuit Nunangat," 3.

7. Woodbury, "Eskimo and Aleut Languages," 56.

8. Dorais, *The Language of the Inuit: Syntax, Semantics, and Society in the Arctic*, 27-29.

9. Woodbury, "Eskimo and Aleut Languages," 49.

10. Dorais, *The Language of the Inuit: Syntax, Semantics, and Society in the Arctic*, 55.

Figure 2. Dialects of the Inuit Language



Source: Adapted from Wikimedia Commons <sup>11</sup>

### Language in Nunavut

Nunavut's Official Languages Act (OLA) recognises three official languages: English, French, and Inuktitut, an overarching term employed in Nunavut that refers to Inuktitut and Inuinnarqutun, two dialects of the Inuit language.<sup>12</sup> The OLA's division of Nunavut's languages is simplistic, because it does not reflect the dialectal diversity found within the territory. The number of dialects of Inuktitut spoken within the territory has yet to be decided upon, but, as previously discussed, numbers many more than two. The language programme Inuktitut Tusaalanga reports that there are nine varieties, whereas linguist Louis-Jacques Dorais and language experts Alexina Kublu and Mick Mallon agree that there are seven major dialect groupings in Nunavut. Moreover, Inuit speakers have their own perceptions of what constitutes a dialect, and often associate a unique manner of speaking with each individual community.<sup>13</sup>

Despite this complex linguistic situation, only the official languages were considered in the 2011 Statistics Canada census. The majority of the population, 21,530 persons, reported Inuktitut as their mother tongue, followed by English with 8,925 persons and Inuinnarqutun with 295 persons. The proportion of Nunavum-

11. Wikimedia Commons, *Inuktitut Dialect Map*, Digital Image, 29 Dec 2010, [https://commons.wikimedia.org/wiki/File:Inuktitut\\_dialect\\_map.svg](https://commons.wikimedia.org/wiki/File:Inuktitut_dialect_map.svg).

12. Palmer, "The Role of Translation in Linguistic Standardisation across Inuit Nunangat", 57.

13. *Ibid.*, 67.

miut who spoke an Inuit language dialect most often at home decreased from 54% in 2006 to 52% in 2011. English was the mother tongue of only 28% of the Nunavut residents, yet it was the language spoken most often at home for 46% of the population.<sup>14</sup> The widespread usage of English is of concern to much of Nunavut's population, for they fear that it threatens the continued use of Inuktitut. In a study of the eastern Canadian Arctic, Dorais argues that a diglossic relationship exists between English and Inuktitut, using English for prestigious "high" functions such as upper education, government, well-paying work, and literature, and Inuktitut for "lower" tasks, such as private conversations, non-specialized jobs, and in children's first years at school.<sup>15</sup> He concluded that "Inuktitut may have some official status, but it is generally more symbolic than real."<sup>16</sup> This imbalance between languages could result in speakers preferring to be associated with the prestigious, "high" language and eventually losing the "low" language. Dorais conducted a further analysis in a study of language usage in Iqaluit in which he determined that English was the lingua franca of the community because it was understood by everyone and was "the most convenient means for communicating with the wider world."<sup>17</sup> However, this prestigious status of English did not diminish the importance of Inuktitut. The studied speakers related the use of Inuktitut to their Inuit identity and therefore attributed great value to it. They believed that it was important to transmit this language to their children, resulting in the majority of Inuit residents of Iqaluit being fluent in this language. Furthermore, he noticed a trend in the age of speakers: parents would speak to their children in Inuktitut until the children began learning English at school, at which point they would then speak to them in both English and Inuktitut. When these children grew up, they would repeat this pattern with their own children, always first transmitting Inuktitut to the younger generation.<sup>18</sup>

### **Orthography in Northern Canada**

#### The Invention of Orthography for the Inuit Language

The Inuit do not have a tradition of orthography, but have historically used other means to record events. The Inuit used oral tradition to record histories<sup>19</sup> -

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14. Statistics Canada, *Focus on Geography Series, 2011 Census*. Statistics Canada Catalogue no. 98-310-XWE2011004, 2012.

15. Louis-Jacques Dorais, "Bilingualism and diglossia in the Canadian Eastern Arctic," *Arctic* 42, no. 3 (1989): 199-207.

16. *Ibid.*, 201.

17. Louis-Jacques Dorais, "Why Do They Speak Inuktitut? Language and Identity in Iqaluit" (Research Report, Quebec City, 2001) 12.

18. *Ibid.*

19. Dorais, *The Language of the Inuit: Syntax, Semantics, and Society in the Arctic*, 162.

hunters on the Mackenzie Coast hunters would tattoo a cross on their shoulder every time they killed a whale, and murderers marked their face with tattooed stripes. In addition, women in most Inuit groups would tattoo their face, arms, and thighs to show that they had reached childbearing age.<sup>20</sup> Danish-Norwegian missionary Hans Egede first applied orthography to the Inuit language in Greenland in 1721 by developing a system for transcribing the Inuit language using Roman orthography. Samuel Kleinschmidt, a Moravian missionary, standardised this writing system to Kalaallisut, one of the dialects of the Inuit language spoken in Greenland, in 1850. Orthography was introduced in Canada in the late 1700s, and Roman orthography was adapted to the Inuit language in Nunatsiavut, Arctic Quebec, by German Moravian missionaries. In both Greenland and in Canada, missionaries developed the writing system in order to translate the Bible and thus spread Christianity throughout the Inuit world.<sup>21</sup>

In the mid 1800s a second writing system for the Inuit language, syllabics, was developed, once again by missionaries with the intent of converting the Indigenous peoples.<sup>22</sup> James Evans, a Wesleyan missionary, first invented syllabics to transcribe the Ojibway language. This orthography consisted of nine symbols, which could be written in different positions to represent the sound combinations of the Ojibway language. He was initially refused permission to use this invention, and could only put it into practice in 1840 when he was transferred to the Norway House in northern Manitoba, Cree territory. There he adapted his writing system to the Cree language, where it gained popularity.<sup>23</sup> Contrary to the attitude towards syllabics today, at that time it was believed that proficiency in syllabics was easy to acquire: Harper notes, “The syllabic system could be learned in a few hours, and each new learner became a teacher to his fellows.”<sup>24</sup>

However, not all perceptions of syllabics were positive. David Anderson, Bishop of the Diocese of Rupert’s Land, echoed a statement often heard today: “if [the Indigenous peoples] had only been taught to read their own language in our letters, it would have been one step towards the acquisition of the English tongue.”<sup>25</sup> Residents in Nunavut, where the syllabic writing system continues to be employed,

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20. Ibid., 172.

21. Palmer, “The Role of Translation in Linguistic Standardisation across Inuit Nunangat”, 25-30.

22. Syllabics were only in what is modern day Nunavut and not across the Inuit world.

23. Kenn Harper, “Innovation and Inspiration: The Development of Inuktitut Syllabic Orthography,” *Meta: Translators’ Journal* 38, no. 1 (1993): 18.

24. Ibid., 18.

25. Ibid., 19. Quoted in.



wonder if they would not have more facility learning English if they were taught only Roman orthography.<sup>26</sup> Reverend Edwin Watkins predicted this contemporary debate when he stated that, “sooner or later [the syllabic writing system] will be set aside, and an alphabetic character be introduced.”<sup>27</sup>

Despite his reservations towards this writing system, Watkins was convinced to collaborate with James Horden, a missionary and schoolteacher, to introduce syllabics to the Inuit. In 1855, while working at Fort George with Inuit from Little Whale River, they altered the writing system so that it could be used for Inuktitut. One year later Horden printed the first works, selections from the Gospels, in Inuktitut syllabics. None of these documents remain today. Watkins did not continue his work with Inuktitut, for he transferred away from Fort George in 1857.<sup>28</sup> After this time, work on Inuktitut syllabics was sporadic. In 1859 the first surviving document in Inuktitut syllabics, Watt’s First Catechism, was published. The general consensus was that the writing system needed to be altered if it were to accurately represent Inuktitut, and changes such as superscripts and dots on certain symbols were introduced.<sup>29</sup> The necessary modifications to syllabics could be attributed to the fact that the missionaries who invented this writing system did not consider that the Inuit language was not homogenous, and as a result their one writing system could not capture the many distinctions between Inuit language dialects<sup>30</sup>. Clearly, syllabics never managed to correctly capture the many forms of the Inuit language, for adjustments continue to be proposed today.

### The Evolution of the Orthography Debate

The Department of Northern Affairs and National Resources (DNANR) discussed the future of writing systems in the North in the 1950s and 1960s.<sup>31</sup> According to the DNANR, the purpose of this initiative was the necessity for a “common written language which would, in a near future, encompass the extensive Ca-

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26. John Amagoalik, “My Little Corner of Canada, Oct. 24,” *Nunatsiaq News*, 24 Oct 2014, [http://www.nunatsiaqonline.ca/stories/article/65674my\\_little\\_corner\\_of\\_canada\\_oct.\\_24/](http://www.nunatsiaqonline.ca/stories/article/65674my_little_corner_of_canada_oct._24/).

27. Kenn Harper, “Innovation and Inspiration: The Development of Inuktitut Syllabic Orthography,” 19.

28. *Ibid.*, 19-20.

29. *Ibid.*, 20-21.

30. Palmer, “The Role of Translation in Linguistic Standardisation across Inuit Nunangat,” 35.

31. Kenn Harper, “Innovation and Inspiration: The Development of Inuktitut Syllabic Orthography,” 22.

nadian Eskimo domain.”<sup>32</sup> They consulted linguists Gilles Lefebvre and Raymond Gagné, who agreed that syllabics should be gradually phased out and only Roman orthography used. Gagné argued that, “the syllabary is inaccurate” and concluded that, “it must either be improved or discarded.”<sup>33</sup> This working group had not accounted for the emotional value that the syllabic writing system held, and continues to hold, for the Inuit. Missionaries may have invented this orthography, but many Inuit have adopted it as their own, and consider it to be an important part of their history and identity.<sup>34</sup>

The work of the DNANR, Lefebvre, and Gagné concluded not that syllabics should be discarded, but that this orthography needed to be standardised. In 1973 the Inuit Tapirisat of Canada (ITC) created a Language Commission, whose purpose was to study the written language and make recommendations for its evolution.<sup>35</sup> Three years later, in 1976, the Language Commission proposed a standardised writing system. This new system was a dual orthography, which consisted of Roman characters and their equivalent syllabic characters.<sup>36</sup> This writing system, used for Inuktitut, is the official orthography of the Canadian Inuit through to today. The other official languages, English, French, and Inuinnaqtun, use only Roman orthography.<sup>37</sup>

In recent years the orthography debate has gained momentum. This discussion runs parallel to the increased fear that the Inuit language, culture, and ultimately identity, are disappearing.<sup>38</sup> In 2008 the Inuit took this issue into their own hands, and initiated changes within their territory. In June of that year a unanimous vote resulted in the passing of the Inuit Language Protection Act in Nunavut, the purpose of this act being to protect the Inuit language from being swallowed by English.<sup>39</sup> It focuses on the use of the Inuit language in the workplace, on public signs, and in education. It also requires that any client or customer may receive services in the Inuit language, and obligates the Government of Nunavut to design education programs that will “produce secondary school graduates fully proficient in the Inuit

32. *Ibid.*, 22. Quoted in.

33. *Ibid.*, 23. Quoted in.

34. Dorais, *The Language of the Inuit: Syntax, Semantics, and Society in the Arctic*, 179.

35. *Ibid.*, 180.

36. Aurélie Hot, “Language rights and language choices: The potential of Inuktitut literacy,” *Journal of Canadian Studies* 43, no. 2 (2009): 184.

37. Palmer, “The Role of Translation in Linguistic Standardisation across Inuit Nunangat,” 38.

38. Dorais, *The Language of the Inuit: Syntax, Semantics, and Society in the Arctic*.

39. Annis May Timpson, “Reconciling Indigenous and Settler Language Interests: Language Policy Initiatives in Nunavut,” *Journal of Canadian Studies* 43, no. 2 (2009): 160.

Language, in both its spoken and written forms.”<sup>40</sup> It also gives parents the right to have their children instructed in the Inuit language.<sup>41</sup> The Inuit are united by a shared value of their language, culture, and identity, but they are divided when it comes to the writing systems – some argue that syllabics are an integral part of Inuit society, and others see benefits to using only Roman orthography. This discussion has provoked a heated debate not only because of the ties between language and identity, but also due to the might of the written word. In the words of Dorais, “In a society influenced by Europeans, controlling the word is a source of power.”<sup>42</sup> Nunavut has been heavily influenced by European society, and if the Inuit want to gain authority in the eyes of Europeans they must play by the rules of the dominant culture. Writing is thus an important issue and must be given serious and thoughtful consideration.

### **Syllabics in a Revised World**

#### **The Syllabic Generation**

Those who grew up with syllabics, now over 50 years of age, identify strongly with this writing system and see it as a way of preserving their language, culture, and identity.<sup>43</sup> During the lifetime of this generation, syllabics played a more central role in Inuit society – in 1925, most eastern Canadian Inuit could read and write in syllabics, which they had learnt through their communities. These Inuit would teach the writing system to those around them, family and neighbours, and in this way syllabics were diffused in the North. Until recent times when more advanced technologies were invented, such as the telephone and the internet, syllabics were the principal medium of communication. Inuit used this orthography for private correspondence, some Inuit recording personal diaries or important events in their family Bibles.<sup>44</sup> According to Harper although it was invented by missionaries, “Inuit by now regard [syllabics] as their own.”<sup>45</sup> This demographic does not wish to see their adopted orthography taken from away from them.<sup>46</sup>

A revised writing system not only proposes to abandon syllabics, but also

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40. Ibid., 175. Quoted in.

41. Ibid., 175.

42. Dorais, *The Language of the Inuit: Syntax, Semantics, and Society in the Arctic*, 186.

43. Sarah Rogers, “Syllabics versus Roman: Nunavut MLAs debate writing systems,” *Nunatsiaq News*, 03 Mar 2016, [http://www.nunatsiaqonline.ca/stories/article/65674legislative\\_debates\\_merits\\_of\\_syllabic\\_writing\\_system\\_in\\_nunavut\\_school/](http://www.nunatsiaqonline.ca/stories/article/65674legislative_debates_merits_of_syllabic_writing_system_in_nunavut_school/).

44. Dorais, *The Language of the Inuit: Syntax, Semantics, and Society in the Arctic*, 177-78.

45. Kenn Harper, “Innovation and Inspiration: The Development of Inuktitut Syllabic Orthography,” 18.

46. Kenn Harper, “Taissumani, Feb. 4.” *Nunatsiaq News*, 02 Feb 2011, [http://www.nunatsiaqonline.ca/stories/article/taissumani\\_feb\\_4/](http://www.nunatsiaqonline.ca/stories/article/taissumani_feb_4/).

to standardise the Roman orthography used for the Inuit language. Standardisation is a threatening word to many Inuit, for it often manifests as a forced measure or a form of assimilation.<sup>47</sup> They worry that a single writing system would not be able to accurately represent the regional dialects of the Inuit language, and thus their individual identities would be lost.<sup>48</sup> In their report, the Inuit Tapiriit Kanatami (ITK)<sup>49</sup> considered this fact, and noted that it is important that the consultations be “empowering” and “non-threatening” when consulting Nunavut communities on the possibility of a standardised writing system.<sup>50</sup>

### Voting for Revision

The Inuit who argue for standardisation and an abandonment of syllabics are also attached to their Inuit identities. They argue that a standard writing system would unite the widespread Inuit population. Ducharme quotes Terry Audla, the president of the ITK: “Inuit in the circumpolar world are all the same people, and we use the same language. There is no reason why we should be using a different writing system based on artificial boundaries.”<sup>51</sup> Furthermore, they recognize the role that English has to play in contemporary Nunavut. Many state that they would like the next generation to be better equipped to learn a second language, namely English, and they believe that mastery of Roman orthography would facilitate this.<sup>52</sup> Others find that syllabics are difficult and awkward to use, and ultimately intimidating.<sup>53</sup> In a study of literacy in Iqaluit and Igloolik, Aurélie Hot notes that all of the bilinguals he interviewed preferred to read and write in English because they perceived it to be “easier, faster, and more convenient.”<sup>54</sup> Hot also remarked

47. Inuit Tapiriit Kanatami, “Summary Report: Pre-Summit Workshop on Inuktitut Language,” 25-26 Mar 2014, <https://www.itk.ca/summary-report-pre-summit-workshop-inuktitut-language/>, 10.

48. Steve Ducharme, “Atausiq Inuktitut Titirausiq: delegates ponder one written Inuit language,” *Nunatsiaq News*, 26 Aug 2015, [http://www.nunatsiaqonline.ca/stories/article/65674atausiq\\_inuktitut\\_titirausiq\\_delegates\\_ponder\\_one\\_written\\_inuit\\_language/](http://www.nunatsiaqonline.ca/stories/article/65674atausiq_inuktitut_titirausiq_delegates_ponder_one_written_inuit_language/)

49. “The National Voice for Inuit Communities in the Canadian Arctic,” *Inuit Tapiriit Kanatami*, 2017, <https://www.itk.ca/national-voice-for-communities-in-the-canadian-arctic/#intro>. The ITK is a national organization that represents the Inuit in Canada.

50. Inuit Tapiriit Kanatami, “Summary Report: Pre-Summit Workshop on Inuktitut Language,” 8.

51. Steve Ducharme, “Pan-Arctic summit recommends Roman orthography for the Inuit language,” *Nunatsiaq News*, 28 Aug 2015, [http://www.nunatsiaqonline.ca/stories/article/65674pan-arctic\\_summit\\_recommends\\_roman\\_orthography\\_for\\_the\\_inuit\\_language/](http://www.nunatsiaqonline.ca/stories/article/65674pan-arctic_summit_recommends_roman_orthography_for_the_inuit_language/)

52. Sarah Rogers, “Syllabics versus Roman: Nunavut MLAs debate writing systems.”

53. John Amagoalik, “My Little Corner of Canada, Oct. 24.”

54. Aurélie Hot, “Language rights and language choices: The potential of Inuktitut liter-

that the population fluent enough to read and write in syllabics regularly was small, but that nonetheless there still existed a necessity for syllabics, mostly for signage and translations, in the public sector. Overall he concluded that literacy in syllabics was a “secondary literacy” to English.<sup>55</sup> When considering the effect that this status of the Inuit written language could have on the preservation of this language, he suggested increased access to adult education, increased availability of interesting written materials in the Inuit language, and changes in the schooling system.<sup>56</sup>

Dorais echoed Hot’s suggestion when he argued that the reason for difficulties with syllabics lies not with their degree of difficulty, but rather with their availability. In most Nunavut communities, students are taught in Inuktitut up until the fourth grade, after which the language of instruction is English. The longer duration of English instruction and the greater volume of English written resources result in the popular Inuit perception that English is a much easier language.<sup>57</sup> Dorais rejects this perception, writing that “several monolingual Inuit well trained in reading skills can read a syllabic text at the same speed an alphabetical English text is normally read.”<sup>58</sup> However, the importance of this debate lies not in whether or not syllabics are easy to acquire, but how the Inuit must adapt to changes within their societies. Lingual adaptations in Inuit societies are not a new phenomenon, as Inuit have been struggling with the issue of how to make sense of the uncountable number of foreign objects, concepts, and institutions introduced by Europeans since European contact in the North.<sup>59</sup> Throughout the Arctic, Inuit dialects approached the task of naming European imports in differing ways, creating new Inuit words and, to a lesser extent, borrowing European terms. The Inuit language adapted to these changes and is “able to express quite precisely the world that surrounds [it].”<sup>60</sup> Contemporary Inuit are forced to continue adapting to ceaseless foreign influences.

## Conclusion

Adaptations to the Inuit language have been ongoing since initial European contact, and the writing system has been subject to proposals of change to the writing systems since the introduction of syllabic orthography in the 1800s. The debate in Nunavut of whether or not the syllabic writing system should be abandoned in

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acy,” 194.

55. *Ibid.*, 193.

56. *Ibid.*, 194.

57. Dorais, *The Language of the Inuit: Syntax, Semantics, and Society in the Arctic*.

58. *Ibid.*, 187.

59. *Ibid.*, 151.

60. *Ibid.*, 161.



favour of a standardised Roman orthography has gained momentum due to an increased presence of English in Inuit society. Questions of modifications to language provoke passionate debates due to the close ties between language and identity, resulting in emotional cries from all demographics of Inuit society. What the Inuit need to consider is not which writing system is “easier” to use, but rather which one will enable them to adapt to their transforming communities. The most important question to consider is that “language development isn’t about the needs of government. It’s for the people in communities to be able to speak to each other.”<sup>61</sup> The Inuit must develop a system that represents both their individual and collective identities, and enables them to communicate in a continuously changing world.

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61. Jim Bell, “One Inuit Language, many Inuit dialects,” *Nunatsiaq News*, 15 Feb 2011, [http://www.nunatsiaqonline.ca/stories/article/15021\\_one\\_inuit\\_language\\_many\\_inuit\\_dialects/](http://www.nunatsiaqonline.ca/stories/article/15021_one_inuit_language_many_inuit_dialects/). Quoted in.

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**Montreal's Gay Village and the  
LGBTQ Community**

**From Stigmatization and Disregard to Visible  
Living Spaces Fostering Legitimacy and  
Tolerance**

**Bertille Pruvost**





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# Montreal's Gay Village and the LGBTQ Community: from Stigmatization and Disregard to Visible Living Spaces Fostering Legitimacy and Tolerance

## Introduction

In his lecture, *Queer Nation*, Terrie Goldie explores what it means to be queer in the provinces of Canada, excluding Québec. He investigates feelings of belonging in Canada's LGBTQ community and, via an intersectional approach, assesses whether its members feel more distinctly Canadian or queer. He chooses not to examine Québec because it is distinct in its treatment of LGBTQ matters.<sup>1</sup> In fact, the LGBTQ community and culture in Québec are not only different compared to Canada, but also to the rest of the world. Québec is often pointed to as a world-leading model concerning the recognition, tolerance and acceptance of the LGBTQ community. In 1977, Québec was the first regional legislator in North America to forbid discrimination based on sexuality; Canada as a whole can be said to have since followed on this tolerant path, with gay marriage having been allowed in Canada as of 2005 and legal protection to sexual minorities having likewise been provided more actively than in most other countries<sup>2</sup>. . In the Québécois city of Montréal, the Diversité Festival has existed since 2000, the Gay Pride Parade since 2007, and the Outgames (the gay Olympic games) were organized for the first time there in 2006. There are no statistics in Canada about the correlation between sexual orientation and relocation to certain areas, but the Village (the gay neighbourhood of Montréal) is one of the most visible gay neighbourhoods, at least commercially, because of the many goods and services offered there<sup>3</sup>, in the world.

The aim of this essay is to show, through a case study of the Village, how such a neighbourhood was established, its specific characteristics, and why it materialised in Montréal in particular. The analysis will be divided into four parts: first, an explanation of the situation of Montreal's LGBTQ community before the creation of the Gay Village; second, a closer examination of the factors involved in

1. Goldie, Terry. *Queer Nation*, edited by Toronto : Robarts Centre for Canadian Studies, 1997.

2. Nash, Catherine J. and Catungal John P. "Introduction: Sexual Landscapes, Lives and Livelihoods in Canada", *ACME: An International E-Journal for Critical Geographies* 12(2): 181-192, 2013.

3. Demczuk, Irène, and Frank William. Remiggi. "Chapitre X Le Village Gay De Montréal : Entre Le Ghetto Et L'espace Identitaire." *Sortir De L'ombre: Histoires Des Communautés Lesbienne Et Gaie De Montréal*. Montréal: VLB, 1998. N. pag. Print.

the creation of the Village; third, an analysis of how the physical space was invested and how this process was unique to Montreal; and finally, an examination of the neighbourhood's unique creation of a vibrant community with which individuals interact in order to facilitate access to not only commercial services but also associations and organizations that are needed by this population.

### **Marginalization and Discrimination: the Situation of Montréal's LGBTQ Community prior to the Creation of the Village**

It is important to grasp the complexity of the situation that members of the LGBTQ community faced in Québec and, more specifically, Montréal prior to the creation of the Village. LGBTQ persons were scattered around the city, although some places had greater concentrations than others (such as the central business district or the city's red light district, around the intersection of Sainte-Catherine and Saint-Laurent streets). The competing interests of various groups with regards to LGBTQ presence in Montréal made such a situation untenable and unsustainable in the long term, what with gay establishments being the target of continuous and relentless raids by a police force commissioned by city officials with moralistic motives. A possible explanation for the raids was the desire to clean the city for the 1967 World Exposition, or later for the 1976 Olympic Games. The image the city wanted to promote and advertise to the world (one founded on the values of modernity, prosperity, cleanliness, and the appearance of a city hall in full control of the city) pushed the city officials to remove the marginals (mostly sex workers and members of the queer community) from the spots they occupied in the city centre.<sup>4</sup> From the 1970s to the 1990s, such raids could be organized under the Federal Bawdy-House laws, despite the decriminalization of homosexuality in 1969. In the name of morality, raids thus both targeted establishments and arrested individuals visiting them. This pushed the LGBTQ community to occasionally protest, resulting in the closure of streets in the central business district.<sup>5</sup> The lives of people living there were thus frequently disrupted. In the context of the Gay Rights Movement (starting in the late 1960s), raids, like at the sauna *Acquarius* in 1975, where 36 people were arrested<sup>6</sup>, or at the *Truxx Bar* in 1977 (said to be the "Stonewall" of Montréal), \_\_\_\_\_

4. Hinrichs, Donald W. *Montreal's Gay Village: The Story of a Unique Urban Neighborhood Through the Sociological Lens*, Edited by iUniverse, 2011. p.27

5. Hunt, M. & Zacharias, J. "Marketing the imaginary of Montréal's (Gay) Village". *Canadian Journal of Urban Research*, 17(1), 28-57, 2008. p.36-37

6. Hinrichs, p. 16

where 50 policemen carrying machine guns raided the bar and arrested 146 persons, seemed unacceptable. This situation was exacerbated by accounts detailing how some people were being forced to be tested for sexually transmitted diseases or locked for many hours in small cells. The day after the raid at the Truax Bar, 2000 people gathered in the neighbourhood and expressed their discontent. These raids galvanized the LGBTQ community<sup>7</sup>, creating relatable experiences they had all shared at some point. Such police raids were a very substantial cause of the evolution of the LGBTQ community's search for a safe space that would follow.

In 1977, provincial Bill 88 forbade discrimination based on sexuality in Québec, but the LGBTQ community had not forgotten the many killings by the police in the last decades which had been left as cold cases.<sup>8</sup> For this reason, in the 1970s and in the context of the Gay Rights Movement during this decade, LGBTQ people got fed up with these raids and the hostility and decided to encourage organizations, political action, conferences, and trainings for people wanting to address the ongoing discrimination. In order to organize the best way possible (and to be stronger to face other special challenges like the AIDS crisis of the early 1980s), they deeply felt the need for a safe space and the solidarity to develop one.<sup>9</sup> Not all Gay Villages developed because of this Gay Rights Movement - for example, the Gay Village of San Francisco was already located in a working class neighbourhood in the early 1960s and fairly safe.<sup>10</sup> In Montréal's case, however, raids and attacks perpetrated on moral grounds were the determining factor.

To nuance this argument, other scholars argue that in the 1950s and 1960s there was a popular movement in North America to encourage the redevelopment of cities and Mayor Drapeau, in keeping with the ethos of the Quiet Revolution, wanted to transform downtown areas into social and public places, using morality to frame his discourse.<sup>11</sup> Rents were also rising, gentrifying the area and making it hard for the businesses and people already settled there to stay. These events and the socio-political context show that the LGBTQ community was in competition with other actors and faced hostility from the city officials over its right to visibility, and was therefore pushed to find a place where it could efficiently address issues specific to itself.

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7. Ibid, p.17

8. Ibid, p.20

9. Ibid, p.10

10. Ibid, p.9

11. Ibid, p.28

## A Socio-Political Context Stimulating the Emergence of Solidarity among Minority Groups

Next, it is important to look at the factors specific to the context of Québec at the time which made a move to a new, single physical location in Montréal where the LGBTQ community could establish themselves possible: the end of La Grande Noirceur and the beginning of the liberal Révolution Tranquille, the availability of a neighbourhood ideal for revitalization and undisputed by city officials, and the increasing concentration of important businesses and people in the neighbourhood. As said previously, the Gay Rights Movement encouraged the search for a tangible LGBTQ space, but it is to be noted that the larger context of the end of the Grande Noirceur also permitted a culture of diversity to flourish, as well as laws promoting tolerance and the granting of freedom and rights to the LGBTQ community. Between the 1930s and the 1960s, Québec had been ruled with traditionalism and conservatism, but in 1960 the Liberal party was elected under Jean Lesage, ushering in a time of significant change and modernization. Until the end of his mandate in 1966, Lesage encouraged secularization and liberal values. In the same spirit as the Révolution Tranquille, the election in 1976 of René Lévesque as Premier of Québec represented a further step towards the acceptance of minorities. The 1960s and 1970s were crucial for the LGBTQ community; the doctrine of the Catholic Church views homosexuality as sinful, so the decline of Catholic influence played an important role in the growing acceptance of LGBTQ persons in Québec and in Montréal. Progresses ensuing from this ideological change included the implementation of Bill 88, the inauguration of the Village in 1982 and the official recognition by Montréal in 1992 of same sex couples, including them in its workers' insurance program and touting openness to the community as modern and progressive.<sup>12</sup> People adopted new behaviours because of these changing conditions in Québec. Michel Dorais further insists that Québécois society identifies with marginal populations because of its unique situation in North America, and Laurent McCutcheon posits that the openness of Québec can be explained not only by the Révolution Tranquille, but also because Québec is a small society, which allows for change to occur more rapidly.<sup>13</sup> Thus, in a way, Québec society was ready to let

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12. Ibid, p. 20

13. Chiquette, Sarah Pomar. "Le Québec, Un Pionnier Dans La Lutte Contre L'homophobie - Dossier Estrie Plus.com - Dossier Sp." *Cial*. N.p., 12 Sept. 2014. <[http://www.estriplus.com/content-quebec\\_pionnier\\_lutte\\_contre\\_homophobie-1874-33136.html](http://www.estriplus.com/content-quebec_pionnier_lutte_contre_homophobie-1874-33136.html)>. Web. 12 Dec. 2016

the LGBTQ community both be more tolerated and develop an urban homosexual environment in Montréal, as part of a broader shift towards a form of multiculturalism that was increasingly giving spaces to the minorities within Québec society.<sup>14</sup>

The other factor that rendered this establishment of a gay neighbourhood possible was the availability itself of a neighbourhood in Montréal. The location eventually chosen by the LGBTQ community was a very poor neighbourhood, affected by the loss of jobs and industries in the city centre, with deteriorating buildings, low rents and a low property value. In addition, this area was not sought-after by the city officials, who were interested in other parts of Montréal. In sum, the area was ready for change. Three metro stations offered an easy access to the neighbourhood, and the residents were even really happy that some new businesses had decided to establish themselves there and would rejuvenate it, gay or not.<sup>15</sup> The area thus represented an interesting economic opportunity. The commercial base was laid by the clubs Max and K.O.X. in 1983, both situated close to metro Beaudry and to each other, providing a point of convergence for people visiting the area.<sup>16</sup> Thus, following the liberationist discourse of the 1970s which pushed minorities to rebel against the colonial powers of national governments, a reformist discourse spread during the 1980s in Québec, in which the French-speaking community affirmed its difference and a nationalist sentiment against the English-speaking community, as well as the need for this specificity to be acknowledged not only symbolically but also legally, allowing the LGBTQ community to exploit the “areas of freedom”<sup>17</sup>, the spaces not controlled by society, left free at the time, in order to create a visible neighbourhood of their own where they could develop commercial and associative services meeting their needs and could also just be themselves.

It is important to point out that this birth of the Village in Montréal is special, and that the historical context played a big role. For example, in France, where the situation was different (homosexuality was decriminalized later in 1981, and gay marriage only legalised in 2013), not even Paris had such a big or vibrant gay neighbourhood. The Village of Montréal is therefore the result of a unique history. To nuance this rather optimistic picture, it is also worth mentioning that the interests of city officials were also at stake, and that it was a good thing for them

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14. Remiggi, p.284

15. Hinrichs, p.26

16. Remiggi, p.281

17. Léobon, A. “Champs de libertés et construction de territoires homo et bisexuels en France et au Québec” <[http://gaystudies.org/article\\_leobon\\_espace.pdf](http://gaystudies.org/article_leobon_espace.pdf)>. Web. 12 Dec. 2016.

to see all of the LGBTQ community gather in one space, in order to be more able to confine gay life in a single area and control it. For example, while the State was giving money to encourage certain businesses in the neighbourhood seen as morally tolerable, it was still trying, at the same time, to restrict the appearance and popularity of others, like strip and sex clubs, by refusing them this kind of financial assistance.<sup>18</sup>

### **The Visible Occupation of Public Space: a Crucial Requirement for Normalization**

Once they found the location for the neighbourhood, the LGBTQ community decided that their occupation of the Gay Village had to be visible and make the most of the “degree of freedom” discussed previously.<sup>19</sup> It should show the development of the community publicly, as well as the opportunities for expression and visibility. This occupation of the neighbourhood was done in four major ways: the establishment of many gay businesses in the neighbourhood and especially on Sainte-Catherine Street; the use of obvious symbols; a large portion of the community actually living in the neighbourhood; and the behaviours of individuals themselves, who expressed their sexuality more freely. Firstly, beginning in the late 1970s and becoming more prominent in the 1980s, many gay businesses established themselves in the Village, and did not hesitate to show their colours and positioning with pride. For example, the Cinéma du Village, the shop Priape, and the bars Max and K.O.X. became real magnets and benchmarks for the neighbourhood.<sup>20</sup> These emblematic businesses emphasized, through their names, front windows, and customer base, the visibility of the community and its culture. In addition to these businesses, people also used various symbols and items, such as the rainbow flag and other flags representing the community, the pink or coloured triangle, banners in the streets, and the colours of the rainbow themselves, to challenge heteronormativity and make sure that their existence was visible and felt. The Beaudry metro station even has pillars that are painted in these colors. Donald W. Hinrichs, a sociologist who wrote a very detailed book on the Village, is looking for such visible symbols when he tries to establish the boundaries of the neighbourhood<sup>21</sup>, thus showing how they play an important role in the visibility and identification of

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18. Hunt & Zacharias, p.39

19. Leobon

20. Ibid, p.8

21. Hinrichs, p.36



the village. Another essential component that makes the Gay Village of Montréal special is that it is very much a neighbourhood in which people from the LGBTQ community live. This is much more the case than in other gay neighbourhoods, like le Marais in Paris, which is mainly used for businesses and entertainment, without really being inhabited by the people visiting it, who are mainly looking for sexual encounters.<sup>22</sup> In Montréal, there is a residential attractiveness to the Village in addition to its commercial attractiveness, and this proved essential in the rise of the Village. Finally, what is really important to grasp is that it encouraged people - individuals from the community - to be visible themselves. Goffman explores this search for visibility via the concept of “performance”<sup>23</sup>; people in the Village wanted other people in the public space to acknowledge their existence and respect it, so they decided to show them what they wanted. Cruising, bar evenings, festivals like *Diversité* and the Pride Parade, public displays of affection... LGBTQ people can affirm their originality when performing activities in the public sphere, or choose to do it more intimately and to a smaller audience in the private sphere. They can show, by occupying the public space, that their culture is valid and has to be represented. As Brian Ray explains, “liberation” comes with the neighbourhood and the occupation of the physical space.<sup>24</sup> On another note, Claire McNicoll warns against people thinking about the neighbourhood as a space for the retrenchment of a community; the Village, like other neighbourhoods occupied by minorities, does not derive from a desire for segregation, but rather a will to blend into Québécois society through the appropriation of an urban space and the visibility it provides.<sup>25</sup> Once again, the influence of the government and its agencies can be detected here and discussed. It is in its interest, for tourism purposes, to participate in making the space more visible and attractive. Many images of the Village are sponsored by the government, with tourism agencies producing maps, brochures, magazines, even a website about it and making the Village a permanent spectacle.<sup>26</sup> What is not clear is whether this means that the government is definitively supportive of the LGBTQ community or that it only helps it because of a monetary interest. In either case, a more complete understanding of how the LGBTQ community physically appropriated this neighbourhood in the hope of normalizing its status in Québec and

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22. Ibid, p.15

23. Ibid, p.71

24. Ray, B. “A diversity paradox: Montréal’s Gay Village. In *Our Diverse Cities. Volume 1*” *Ottawa: Metropolis Project, Citizenship and Immigration Canada, 72-75, 2004. p.74*

25. Remiggi, p.284

26. Hunt & Zacharias, p.45

Montréal emerges from this line of inquiry.

### **The Progressive Development of a Unique Neighbourhood's Particular Dynamic of Interactions and Solidarity**

The last thing that is very important to grasp concerning the Village is that this gay neighbourhood is perhaps the one in the world that has above all succeeded in successfully creating a very strong community. This is because it not only is visible and provides commercial services to the members of the community, but can also address a broad range of needs expressed by the community. People create a neighbourhood like this as part of their search for solidarity, in order to not feel alone in their minority status and have a place that feels like home. This physical space allows people to communicate with each other and develop needed services that did not previously exist.<sup>27</sup> The Village in Montréal is very much characterized by its huge development of not only gay businesses but also associations and organizations aimed at defending the rights of the members of the LGBTQ community. The acceptance of the LGBTQ community in Montréal (compared to Paris for example) seems to be correlated to the fact that the Village, while building services that are directed toward the members of its community, remains very much in dialogue with the rest of society and open to interactions.<sup>28</sup> There is less room for sex and entertainment than in the Marais, but more services and associations, meaning that people can really identify the imaginary space to which they belong by participating in the life of the neighbourhood. The Village is therefore not only a physical space but also a “psychological construct.”<sup>29</sup> The level of proximity that goes hand in hand with a shared physical location such as this one means that the gay community gets a common culture and common identities, individuals share their experiences and, thus, all of this encourages creativity, solidarity, and many positive outcomes for the community and the members sharing this common culture. Even if the Village is not a political unit in the strict sense of the term, that does not mean that this is not a dynamic neighbourhood that has many projects which its residents and visitors are ready to defend.<sup>30</sup> Many issues that the community face now can be dealt with through organizations and associations created in the Village. For example, the “Declaration of Montréal” on LGBT Human Rights in 2006 came out of the International Conference of LGBT Human Rights, which had

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27. Leobon

28. Leobon, p.7

29. Hinrichs, p.41

30. Ibid, p.88-89

mainly been discussed in the Village by many organizations and local personalities. Similarly, many associations targeting different subparts of the community in the Village have been created (e.g. the Association des Mères lesbiennes, GLAM – for gay Asians –, an association for gay immigrants<sup>31</sup>). Therefore it can be said that this gay community of Montréal is institutionally complete and furthermore provides a home and a sense of familiarity for minorities and the disenfranchised.<sup>32</sup> Hunt and Zacharias speak of “community development” when the actions of major players (in the case of Montréal, the development of shared institutions and spaces) in a community are meant to bring benefits to the collectivity and they add that, when it comes to Québec, the birth and evolution of gay villages and such strong solidarity systems are related more broadly to the emergence of spaces for people who are not fitting into the mainstream culture.<sup>33</sup> In this way, the different associations present in the Village, the networks built there, the events, the safe spaces, the media outlets (among others, the headquarters of Radio Canada and TVA), the health services (a lot of which developed because of the AIDS crisis in the 1980s), the religious organizations, the educational organizations, the magazines (for example *Fugues* and *Mirror*), and the local personalities (Mado, Diane Dufresne, etc.) shape queer practices and experience, making this community a lot more than just a physical gathering of individuals. It is not just a geographical space, but a social space, emerging from memories of the history of the struggles of the LGBTQ community, where culture is reproduced and transmitted, and where people share identities and experiences.

### **Where Are We Now? Trends in the Ongoing Evolution of the Village**

In conclusion, this case study of the Gay Village of Montréal has explored the special features of the evolution of the LGBTQ community in Québec. It has demonstrated the process by which the community fostered its acceptance by the rest of the society. First has been explained how the LGBTQ community felt the need to gather and get a space of its own because of factors coming from outside of the community (police raids, morality discourses, etc.), as well as from inside (the AIDS and HIV crisis, the will for political representation, etc.). The move to the new neighbourhood has been studied along with the factors that made it possible – mainly location and socio-political context. The actual occupation of the space and

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31. Ibid, p.90-92

32. Ibid, p.160

33. Hunt & Zacharias, p.32

how the gay community mobilized businesses, symbols, items and individuals to physically invest the space and foster tolerance was then analysed, finally proceeding to an exploration of how a sense of common identity and culture was deepened.

Nevertheless, modern developments in the life of the Village oblige us to question any overly optimistic conclusion. Some authors argue that the Village now allows for a subtler form of control on gay people and their sexuality, while others claim that, though mainstream society indeed accepts gay culture now, the culture has been adulterated in the process.<sup>34</sup> Be it because of the way spaces, events, and people have been branded<sup>35</sup>, or the will of the Canadian government to align sexual politics with particular forms of Canadian nationalism<sup>36</sup>, or the extreme will of the members themselves to be accepted, the community has been pressured towards homonormativity. This means that it has come to exclude from the Village and the LGBTQ community members, practices, and elements of its culture that still seem too controversial to be accepted. There is also the threat and denunciation (even by members of the community) that the Village is turning into a ghetto. Thus, it can be seen that the fight against marginalization is not over yet, that it can exist even in a space that has been created to be very open and culturally diverse<sup>37</sup>, and that the competing interests of many actors and cultures continue to collide.

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34. Hunt & Zacharias, p.52

35. Ibid, p.35

36. Nash & Catungal, p.183

37. Ray, p.75

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# Challenges to the Private Sponsorship of Refugees in Canada

Noor Bhandal



# Challenges to the Private Sponsorship of Refugees in Canada

## Introduction: A Flexible, but Flawed, Tool

Since its establishment in 1978 following the 1976 *Immigration Act*, the private sponsorship program has been a significant factor in Canada's response to refugees. It has become a "flexible tool" with which Canadians can address a variety of resettlement needs.<sup>1</sup> The Canadian Council for Refugees has stated that the program has resulted in the resettlement of approximately 275,000 refugees since its inception<sup>2</sup>, and although privately sponsored refugees account for less than two percent of all immigrants to Canada, they comprise almost 20 percent of the total refugees received by the country.<sup>3</sup> The private sponsorship program has not only increased Canada's ability to resettle refugees, but it has also allowed Canadians to contribute to an international issue and better understand the experiences of refugees. However, the lack of training and resources provided to private sponsors has raised concerns over the durability of refugees' resettlement.

For this reason, the private sponsorship program, as an important component to Canada's advocacy for refugees, requires greater attention in order to ensure that it continues to provide adequate support to refugees. This article will address how the absence of resources and training for private sponsors limits the support they are able to provide to refugees in the 12-month sponsorship period. I examine this gap, within Canadian settlement policy, in the education and information to which sponsors have access, and, in so doing, highlight the key players who are affected by the current policy. This article will also outline the program's strengths and weaknesses, while identifying the persistent concerns and challenges that contribute to the problem. Finally, I will provide recommendations for policy reform and suggest areas for future research. Throughout, I argue that with proper train-

1. Barbara Treviranus and Michael Casasola, "Canada's private sponsorship of refugees program: A practitioners perspective of its past and future," *Journal of International Migration and Integration* 4, no. 2 (December 2003): 177.

2. Canadian Council for Refugees, "Private sponsorship of refugees," *Canadian Council for Refugees*, accessed December 1, 2016, <http://ccrweb.ca/en/private-sponsorship-refugees>.

3. Daniel Schwartz, "Canada's refugees by the numbers: the data," *CBC News*, October 4, 2015, <http://www.cbc.ca/news/canada/canada-s-refugees-by-the-numbers-the-data-1.3240640>; Laurent Martel and Carol D'Aoust, "Report on the demographic situation in Canada: Permanent and temporary immigration to Canada from 2012 to 2014," *Statistics Canada*, July 5, 2016, <http://www.statcan.gc.ca/pub/91-209-x/2016001/article/14615-eng.htm>.

ing and access to resources provided by the Canadian government, the outcomes of private sponsorship of refugees in Canada will significantly improve.

### **Private Sponsorship in Canada: How Things Stand Now**

#### **Who Can Sponsor and What Sponsorship Entails**

Currently in Canada, four types of groups may apply to be private sponsors: Sponsorship Agreement Holders, Constituent Groups, Groups of Five, and Community Sponsors.<sup>4</sup> Sponsorship Agreement Holders (SAHs) are incorporated organizations that have a “formal sponsorship agreement” with Citizenship and Immigration Canada (CIC).<sup>5</sup> The most common of these are religious or humanitarian organizations. A SAH can permit Constituent Groups located in the refugee’s expected area of resettlement to sponsor under its sponsorship agreement so that they can also provide support to refugees.<sup>6</sup> Lastly, Groups of Five are made up of at least five local Canadian citizens or permanent residents that get together to arrange sponsorship of the refugee<sup>7</sup>, while Community Sponsors are any local organizations that wish to sponsor.<sup>8</sup> All four of these groups must provide CIC with a settlement plan for the refugees they intend to sponsor, as well as proof that they have the financial means to cover the costs of refugees’ basic needs. Sponsoring groups are responsible for providing the refugees with “care, lodging, settlement assistance and support” for 12 months or until they become self-sufficient, whichever comes first.<sup>9</sup> However, resettlement in Canada is often conceptualized as “economic self-sufficiency consisting of short-term assistance implemented locally.”<sup>10</sup> This definition narrowly focuses on economic participation and contains little acknowledgement of the need for long-term stability for refugees. Consequently, private sponsors do not fully understand the support that refugees need in order to become financially and emotionally independent in the long run. Instead, they unknowingly endanger the resettlement of refugees by not keeping other factors that encourage a successful resettlement, such as trauma- and violence-informed care,

4. Citizenship and Immigration Canada, “Guide to the Private Sponsorship of Refugees Program,” *Government of Canada*, 2012, p.4-5, <http://www.cic.gc.ca/english/resources/publications/ref-sponsor/>.

5. *Ibid.*, 4.

6. *Ibid.*

7. *Ibid.*, 5.

8. *Ibid.*

9. *Ibid.*, 8.

10. Nicole Ives, “More than a ‘good back’: Looking for integration in refugee resettlement,” *Refuge* 24, no. 2 (2007): 54.

language training, employment, education, health care, and cultural institutions, in mind. Improvements to the private sponsorship program that take neglected aspects such as these into account are particularly important during times of crisis when the number of refugees increases exponentially.

### **Refugees and Current Affairs**

Approaches to refugee resettlement “are shaped by national policy contexts and ideological traditions.”<sup>11</sup> Therefore, refugee settlement policy in Canada is greatly impacted by the social context and the state of current affairs, especially as they pertain to refugees, at a given time. In this vein, the lack of resources for private sponsors has become a more ubiquitous issue in recent months due to the Syrian refugee crisis. In 2015, the Trudeau government followed through with its promise to accept 25,000 Syrian refugees.<sup>12</sup> Today, that number has climbed to 40,000 refugees, with about 14,275 of them being privately sponsored.<sup>13</sup> However, the decision to accept this many Syrian refugees in such a short time has meant that the government and Service Provider Organizations (SPOs) are overwhelmed by the growing numbers of refugees and private sponsors that want to help.<sup>14</sup> The government and SPOs are finding that they do not have the time, opportunity or funding to adequately train the sponsors.

### **Strengths and Weaknesses of the Private Sponsorship Program**

With these aspects of the current context in mind, it is important to consider both the program’s strengths and weaknesses in order to understand the private sponsorship process and evaluate how it may be improved. By examining how the program is working well and how it is failing, policymakers can effectively address the specific issues that need to be amended. Despite its strengths, which include the direct form of support it provides to refugees and the ways it allows for an increase in Canada’s capacity to resettle refugees, the private sponsorship program

11. Ibid.

12. Michael Shulman and Marlene Leung, “Trudeau holds firm on timeline for 25,000 refugees,” *CTV News*, November 16, 2015, <http://www.ctvnews.ca/politics/trudeau-holds-firm-on-timeline-for-25-000-refugees-1.2660689>.

13. Citizenship and Immigration Canada, “#WelcomeRefugees: Key figures,” *Government of Canada*, 2016, <http://www.cic.gc.ca/english/refugees/welcome/milestones.asp>.

14. Joe Friesen, “Refugee sponsorship can be a long, complex process – here’s how it works,” *The Globe and Mail*, September 10, 2015, <http://www.theglobeandmail.com/news/national/refugee-sponsorship-can-be-a-long-complex-process--heres-how-it-works/article26323043/>.

has its shortcomings, of which a very important one is a shortage in information and education available to sponsors.

In a research study done by Ives on the resettlement of Bosnian refugees in the United States, the refugees identified four areas in which they felt they needed to participate in order to successfully integrate: “(a) acculturation and culture, including language and religion, (b) employment (and education), (c) social support, and (d) citizenship and advocacy.”<sup>15</sup> An ideal private sponsorship program would prioritize these areas and prepare sponsors to address common challenges associated with these dimensions of refugees’ social, political and economic participation and, by extension, their integration into Canadian society. As things stand now, one clear advantage that can be associated with private sponsorship is how it engages Canadians by giving them an opportunity to connect with the world and offer safety to refugees who have survived conflict, becoming a direct means to support them. Most significantly, sponsors provide refugees with social support and a community in which they can thrive. Ives recognizes that “[a] central process of survival in resettlement is recreating social networks that were damaged or lost as well as reconciling to that loss.”<sup>16</sup> Private sponsor groups may reform and replace the social networks that refugees were forced to leave behind, allowing for the social support from their family and community that refugees lost after they migrated to be “regained through sponsorship.”<sup>17</sup> Additionally, Neuwirth and Clark suggest that a community of private sponsors can introduce refugees to a greater range of services than government settlement workers are able to do.<sup>18</sup>

However, despite these ways in which sponsors may effectively provide social support, not having access to training and resources that facilitate resettlement can hinder sponsors in their ability to address the other factors identified in the Ives research study. And that is not to say that private sponsors always wholly or at least partially fulfill their role as social support and help refugees deal with their feelings of isolation. In some cases, rather, private sponsors “[adopt] a strictly instrumental approach toward refugees [that] may defeat the very purpose of facilitating the refugees’ social adjustment.”<sup>19</sup> In fact, refugees sometimes favour government as-

15. Ives, “More than a ‘good back’: Looking for integration in refugee resettlement,” 57.

16. *Ibid.*, 59.

17. *Ibid.*

18. Gertrud Neuwirth and Lynn Clarke, “Indochinese refugees in Canada: Sponsorship and adjustment,” *International Migration Review* 15 (1981) quoted in Morton Beiser, “Sponsorship and resettlement success,” *Journal of International Migration and Integration* 4, no. 2 (January 2003): 213.

19. Neuwirth and Clarke, “Indochinese refugees in Canada,” 140, quoted in Beiser, “Spon-

sistance rather than private sponsorship because the support from the government is at least universal and the same for most refugees.<sup>20</sup> Whereas it has been widely researched that despite the “minimum standards” outlined in private sponsorship policy which cover the basic needs of refugees, other services, such as language classes, “are dependent upon the capabilities of *local* resettlement agencies, community resources, and knowledge of refugees’ specific needs.”<sup>21</sup> As a result, privately sponsored refugees in one region of Canada may not have the same resettlement opportunities as those in another region.<sup>22</sup> In contrast, government-assisted refugees know what to expect in terms of support, and it does not [depend] on luck whether you [meet] a nice group or not.”<sup>23</sup>

Moreover, private sponsors tend to concentrate their efforts on providing short-term support for refugees rather than “building on relationships of trust in order to help the refugees integrate successfully.”<sup>24</sup> Thus, privately sponsored refugees can have better experiences of resettlement than other refugees (especially in the early months), but they may not have any advantages in the long-run.<sup>25</sup> In fact, research has shown that private sponsorship does not bestow any employment advantages to refugees.<sup>26</sup> Moreover, because they do not understand their relationship with the refugees, private sponsors are “sometimes insensitive to the refugees’ needs.”<sup>27</sup> For example, in a study on Southeast Asian refugee resettlement in Canada, sponsors often did not recognize the refugees’ need for privacy and instead “called the refugees at all hours and insisted on taking them to various activities.”<sup>28</sup> They also would find housing that was not within the financial means of the refugees after the sponsorship period was over or that was in an area with little access to services.<sup>29</sup> Thus, without appropriate training and resources, private sponsors lack

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sponsorship and resettlement success,” 213.

20. Yuen-Fong Woon, “The mode of refugee sponsorship and the socio-economic adaptation of Vietnamese in Victoria: A three-year perspective,” in K.B. Chan and D.M. Indra (eds.), *Uprooting, loss and adaptation: The resettlement of Indochinese in Canada*, quoted in Beiser, “Sponsorship and resettlement success,” 206-7.

21. Ives, “More than a ‘good back’: Looking for integration in refugee resettlement,” 60. Emphasis added.

22. *Ibid.*

23. *Ibid.*, 207.

24. Beiser, “Sponsorship and resettlement success,” 207.

25. Ives, “More than a ‘good back’: Looking for integration in refugee resettlement,” 59.

26. Beiser, “Sponsorship and resettlement success,” 207; Ives, “More than a ‘good back,’” 60.

27. Beiser, “Sponsorship and resettlement success,” 207.

28. *Ibid.* at 28.

29. Beiser, “Sponsorship and resettlement success,” 207; Treviranus and Casasola, “Cana-



an understanding of their relationship with their sponsored refugees and, for this reason, end up jeopardizing their resettlement and integration.

Though privately sponsored refugees, whose own resettlement is at risk, are those most significantly impacted by this unavailability of resources for private sponsors, sponsors themselves are also affected by the fact that they are not fully prepared to organize the refugees' resettlement. As a result of this lack of preparation, many sponsor groups find themselves at a loss when it comes to handling particular situations they encounter, such as trying to foster economic independence among the refugees. In the documentary *Canada's Open House*, private sponsors of Syrian refugees in Atlantic Canada felt that the sponsorship was overwhelming and detrimental to their mental health.<sup>30</sup> When confronted with trying to communicate with the refugees via Google Translate, these private sponsors felt "unqualified" to deal with many of the issues that arose, and that their support would be needed even after the 12-month period.<sup>31</sup> Indeed, private sponsors themselves suffer emotionally and mentally from not having access to resources that would help them deal with the challenges of sponsorship.

Lastly, it is to be noted that when private sponsors are ill-prepared to support refugees, they often share their concerns with SPOs, organizations "funded by CIC, either directly or through provincial programs, to deliver orientation and settlement services directly to newcomers, including sponsored refugees"<sup>32</sup> and turn to them for guidance, which they may or may not be able to give. Because of private sponsors' lack of preparedness, SPOs, who often do not have the governmental support they need to fully function themselves, are left scrambling to organize for private sponsors the resources that the federal and provincial governments failed to provide. In this way, the absence of a comprehensible policy on the training and resources made available to private sponsors prevents refugees, sponsors and SPOs from fully assuming their roles and responsibilities in the functioning of the program and completely benefitting from it. In short, the ineffectiveness of private sponsorship in Canada at many levels originates in large part from the lack of guidance, instruction and support given to the sponsors themselves. Such a risk to sponsored refugees constitutes a serious deficit in policy development that must

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da's private sponsorship of refugees program," 183.

30. Amos Roberts and Joel Tozer, *Canada's Open House*, short film (2016; Artarmon, Australia: SBS Australia), <https://www.youtube.com/watch?v=Rc0yaKzFYzM>.

31. *Ibid.*

32. Refugee Sponsorship Training Program, "Handbook for Sponsoring Groups," January 2011, p.21, <https://www.rstp.ca/wp-content/uploads/2014/03/handbooknov2012.pdf>.

be improved for refugees to enjoy their right to an equal opportunity just as other Canadians are able to do.

## Suggestions for Changes in Policy and Practice

### Improved selection process

Currently, Canadians can become private sponsors as long as they have the financial means to do so and provide CIC with a resettlement plan. However, if CIC had a more extensive application process for private sponsors, then not only could the Canadian government feel more secure in who is sponsoring refugees, but sponsors could be more prepared for their roles in the resettlement process. A better application could involve having sponsors include possible social services, housing, and employment opportunities available to refugees in their area. Potential sponsors could also have to complete an orientation session outlining their roles and responsibilities before being approved for sponsorship.

Nevertheless, there are certainly some disadvantages that could be incurred by private sponsors, should such a policy be implemented. Today, one of the largest issues for private sponsors in Canada is processing delays. This is particularly concerning when it comes to the Syrian refugee crisis, during which the number of Canadians wanting to sponsor refugees has grown. Michelle Zilio of the *Globe and Mail* reported in March 2016 that “Sponsors who responded to the government’s call to help Syrians are now being told waiting times for the arrival of the refugees they sponsored will be months longer than they expected...Now, sponsors are being told they may not meet the refugees they sponsored until 2017.”<sup>33</sup> Moreover, sponsors already complain of “burdensome paperwork” with “forms [that] are extremely complicated and [...] no longer have access to government officials locally to guide them.”<sup>34</sup> Therefore, making a more extensive application process for sponsors would have the negative result of further delays.

### Regular check-ins

The lack of communication between sponsors and the Canadian government is another barrier to resettlement. As Treviranus and Casasola point out, [t]he terms of the [Sponsorship] Agreement also stipulate the re-

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33. Michelle Zilio, “Sponsors frustrated by slowing pace of resettling Syrian refugees,” *The Globe and Mail*, March 24, 2016, <http://www.theglobeandmail.com/news/politics/sponsors-frustrated-by-slowing-pace-of-resettling-syrian-refugees/article29390093/>.

34. Canadian Council for Refugees, “Private sponsorship of refugees.”

sponsibilities of CIC, including commitments to regular communication on individual case processing and overall reporting on a SAH's cases. In actual practice, however, the bulk of refugee-processing visa [offices] did not establish regular communications with SAHs at the designated benchmarks...<sup>35</sup>

Evidently, despite the fact that check-ins are instituted in resettlement policy, few actually occur in practice. Consequently, the government is unaware of the resettlement status of sponsored refugees, and sponsors have trouble communicating with them about possible concerns. By visiting refugees and their sponsors on a consistent basis, settlement agencies could provide resources, guidance and additional social support. Such regular check-ins from the government would also ensure that refugees are receiving the best possible care throughout their sponsorship period. However, this suggestion implies much more work on the part of the government and settlement agencies, work for which they may not have the financial or administrative capacity.

### **Provision of training and resources to private sponsors**

The most intuitive solution to these various problems that seem to originate from the lack of information made available to sponsors would be for the government and SPOs to provide training and resources before and throughout the sponsorship period. These institutions could organize training and orientation sessions in major Canadian cities of every province and territory that would be mandatory for potential sponsors. Such sessions could include discussions about the common problem areas for refugees and what sponsors should do when they arise; an introduction on how to use regional resources to find suitable housing and employment; training to develop skills in trauma- and violence-informed care; an introduction to resources for teaching English or French; and an underlined and emphasized recognition of how important self-care is for both refugees and their sponsors. This type of training would provide private sponsors with a foundation for refugee resettlement and would help prevent sponsors from feeling overwhelmed, underqualified, or unsupported.

Of course, Ives correctly points out that “[a]n agency’s ability to offer courses [to private sponsors] on a consistent basis is limited by federal funding.”<sup>36</sup> The Canadian government and SPOs have very limited budgets for refugee reset-

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35. Treviranus and Casasola, “Canada’s private sponsorship of refugees program,” 188.

36. Ives, “More than a ‘good back’: Looking for integration in refugee resettlement,” 60.

tlement that may not allow for a nationwide training program for sponsors. Such a program would require hiring training coordinators and facilitators all over the country who would need to dispense the same information to potential sponsors. Indeed, the government may not only have to increase its budget allowance for the project, but it would also have to take the time to create a strong training program that would benefit Canadians from coast to coast.

### **A Call for Provisions for Training and Resources**

Given this analysis of the possible solutions to the problem this article has identified, the most helpful one would appear to be to provide training and resources to private sponsors. Importantly, this course of action would be advantageous to sponsors, refugees and SPOs alike. Refugees and their sponsors cannot afford further processing delays in their application and frequent check-ins by CIC or SPOs may not be entirely feasible for the Canadian government. As a result, providing training and resources is a more workable solution and would be highly beneficial to sponsors and refugees in the long-run. With a certified training program, private sponsors could learn, before their arrival, valuable skills to establish a healthy relationship with the refugees. They would feel more qualified to foster a rewarding resettlement experience for all with their newfound skillset.

The appropriate training program would not only educate sponsors about their roles and responsibilities, but also about how to protect themselves and their mental health. Sponsoring a refugee can be a strenuous and overwhelming task, therefore it is important that sponsors be able to care for their own well-being as well as for the refugees they sponsor. Such improvements for sponsors would be a direct benefit to the refugees themselves for various reasons and manners. For example, language proficiency in English or French is a crucial asset to resettlement and a training program would highlight its importance “particularly in gaining access to important educational and employment-related resources.”<sup>37</sup> The government and SPOs could, for instance, include online resources that would assist sponsors in teaching a new language. In addition, an improvement in sponsors’ qualifications and access to information would alleviate some of the burden placed on SPOs from the responsibility to hastily provide resources to private sponsors because other institutions failed to do so. Rather, they would be able to focus their efforts on other areas where they are most needed. For all these reasons, it is appar-

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37. *Ibid.*, 59.

ent that a relevant and comprehensive training program is needed in order for the private sponsorship of refugees in Canada to increase in effectiveness and truly be successful.

### **Conclusions: Helping Sponsors Help Refugees**

This article has addressed the gap in the private sponsorship program concerning the training and resources made available to sponsors. I have focused specifically on the resettlement challenges that refugees continue to encounter because of this gap, while making policy recommendations that take the administrative capacities of the Canadian government and SPOs into account. While private sponsors provide refugees with considerable social support, sponsors do not have the formal resettlement experience that other institutions do. I have suggested that more resources be made available to private sponsors and that a national training program be created to provide sponsors with the tools for a successful resettlement. Otherwise, the volunteer sector that encompasses potential sponsors in Canada feels called upon to give refugees additional support that the government does not have the capacity to provide, stretching itself thin as a result. It is undeniable that although potential sponsors have helpful motivations to resettle refugees, they do not have access to the institutional experience that the government and SPOs often have. As Treviranus and Casasola mention,

[Private sponsors'] strength is their capacity to dedicate time and money, their knowledge of their community, and the networking and personal support they provide the refugees they sponsor. Sponsoring groups need encouragement and reassurance that they will be supported through the provision of services.<sup>38</sup>

The government needs to prioritize making training and resources available to private sponsors in order to fill this gap, allowing sponsors to build a repertoire of useful skills for resettling refugees that will lighten the load for the entire system.

Further research into the private sponsorship of refugees is critical for the improvement of the resettlement process in Canada. It is important that the government explores the types of support available for private sponsors, the types of support provided to refugees, and "the extent to which other community organizations are formally and informally involved in sponsorship..."<sup>39</sup> Indeed, such research will reveal what further changes in policy and practice need to be made to

38. Treviranus and Casasola, "Canada's private sponsorship of refugees program," 198.

39. Ives, "More than a 'good back': Looking for integration in refugee resettlement," 61.

the sponsorship program for it to be as functional and beneficial as possible. The potential for growth within the private sponsorship program continues to be significant and must be recognized by the government if refugees are to receive the best possible care that Canada can offer.



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Canada's Place in a  
Hemispheric War

Molly Harris

**Canada's Place in a Hemispheric War:  
An Exploration of Canada's Role in the War on Drugs, Examined through the  
Lenses of Political Science, Sociology, History, and Cultural Studies**

**W**e spend \$80 billion a year to lock up 2.2 million Americans. We must end the war on drugs & private prisons and pass criminal justice reform,” tweeted Democratic presidential candidate, Bernie Sanders, on December 4<sup>th</sup>, 2016.<sup>1</sup> This Tweet is just one of many statements that Sanders, a self-proclaimed democratic-socialist, has made about the United States’ war on drugs, which has been ongoing since Richard Nixon’s 1968 “law and order” campaign, which was strikingly similar to that of Donald Trump. Sanders’ cost evaluation of the war on drugs and the inherent link between private prisons and a lack of modern criminal justice reform is not exaggerated in order to rally citizens of the United States behind his cause: extensive scholarship points to similar conclusions about the problematic “war” that the United States has been engaged in for forty-eight years. It is important to note, as well, that the materially and ideologically expensive war that has characterized contemporary U.S. history is not contained within its borders. Nixon’s war on drugs has had intense implications on Colombia and Mexico, which are consistently made out to be the primary enemies in the war, as well as on Canada, which is often portrayed as one of the United States’ allied forces.

Despite the obviously problematic levels of addiction in the Americas, and the troubling social, economic, and physical impacts that drugs used in excess can have on individuals or communities, the hemispheric “war” that the United States launched in 1968 has arguably been as harmful to citizens as the drugs that the war has aimed to siege. Through the lenses of history, political science, sociology, and cultural studies, this paper will seek to prove that Canada’s role in the “war on drugs” has been relatively as negative as the United States’ has, and, that through partaking in the cultural portrayals of “drug countries” perpetuated by the United States, Canada is complicit in the war.

This paper will take the following format: after a brief historical review of the war on drugs and the harmful policies that have led to a disproportionate number of racialized minorities being incarcerated in prisons in the United States and

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1. Bernie Sanders (@SenSanders), Twitter, December 4<sup>th</sup>, 2016, <https://twitter.com/Sen-Sanders/status/805491111372296192>

Canada, the paper will discuss the links between the U.S., Canada, and Mexico and Colombia in terms of the war on drugs. Then, the paper will pivot to focusing on the cultural aspect of the war on drugs by unpacking the term itself, and analyzing *Narcos*, *Border Wars*, and *Border Security*, three North American portrayals of “drug countries” that focus on Colombia, the United States and Mexico, and Canada, respectively. These visual cultural portrayals will be discussed in terms of how their consumption contributes to the war on drugs in North America. The discussion will be situated within the framework of Fuyuki Kurusawa’s conceptualization of Americanness, and how Canada’s traditional exclusion from the conversation about the war on drugs has helped or harmed Canada’s stereotype as a progressive haven.

According to historian Ted Galen Carpenter, Nixon’s June 1971 announcement to Congress and the media that the United States would be launching a “war” on drugs should have come as no surprise to the nation.<sup>2</sup> His campaign in 1968 had centered heavily on law and order, and, at a campaign stop in California, Nixon had described illegal drugs as a “modern curse of American youth.” Nixon promised that his administration would take the steps to combat the inflow of narcotics from Mexico and Colombia (as well as Turkey and France).<sup>3</sup> While Nixon did not invent the protectionist drug strategy, and his administration turned out to be the most lawless of all time, his presidency had important implications on the trajectory of hemispheric history in that it officially launched the campaign against any and all narcotics – from the “gateway drugs” of marijuana and opium poppies to heroin and cocaine (which were portrayed as sitting at the top of the narcotic hierarchy). By the time of Nixon’s August 1974 impeachment, there had been little substantial action in combatting the inflow of narcotics into the United States; his proposed policies to cut the supply of drugs at its source had only been imposed sporadically.<sup>4</sup>

Gerald Ford and Jimmy Carter seemed even less committed to any substantial action in the war on drugs than Nixon had been. While both used similar rhetoric similar to Nixon’s in describing the threat that drugs posed to society, their concrete actions were minimal. During the Carter presidency, eleven states even effectively decriminalized marijuana by increasing the amount for which possession resulted in only a \$100 fine, stating that personal marijuana use within the home

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2. Ted Galen Carpenter, *Bad Neighbor Policy: Washington’s Futile War on Drugs In Latin America* (New York, New York: Palgrave Macmillan, 2003), 13.

3. Carpenter, *Bad Neighbor Policy*, 14-15.

4. *Ibid*

was covered by privacy rights, and reducing penalties for drug related offenses.<sup>5</sup> This trend reversed quickly when Ronald Reagan was elected in 1980, however. In 1981, President Reagan referred to illicit drug use and the international drug trade in the larger context of a “crime epidemic” that had been festering in the United States for decades. Reagan’s plan to combat this aspect of the “epidemic” was multifaceted, and included foreign policy measures that would “vigorously seek to interdict and eradicate illicit drugs wherever cultivated, processed, or transported,” as well as a domestic strategy that bolstered defense and police spending as a means of stopping the flow of drugs both into the country and within it.<sup>6</sup>

Reagan’s militancy in the war on drugs appealed vastly to his conservative followers, not only because of the public health problem that drugs posed, but because narcotics offended an extensive range of deeply held social and moral views. In a manner that was undoubtedly closely tied to race, the masses of social conservatives that made up the Republican voter base blamed drugs for the increase in street crimes, the “corruption” of America’s youth, and the decline of traditional morality and “family values.” This was in part due to the perception that drug users committed a high percentage of the nation’s robberies, burglaries, and other offenses as a means of supporting their addictions, but also because of the sentiment of many Reagan conservatives that the drug culture sixties had to be “repudiated.”<sup>7</sup> Between 1980 and 1987, U.S. spending on international narcotics efforts more than tripled; by 1982 the Drug Enforcement Agency (DEA) had significantly expanded its activity in Colombia, and, shortly thereafter, other drug producing countries became targets of the United States’ supply-side efforts.<sup>8</sup>

In addition to Reagan’s foreign policy efforts, which were generally poorly received by the nations that they targeted, his domestic policy leaned heavily towards incarceration and far away from prevention and treatment. A notable aspect of Reagan’s domestic policy is the disparity that existed between sentencing for powdered cocaine offenses and crack cocaine offenses. Crack cocaine, which is no different from powdered cocaine in terms of what it is made of, is cheaper, and used

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5. *Ibid.*, 15-17.

6 Public Papers of the Presidents of the United States: Ronald Reagan, 1981 (Washington, DC: Government Printing Office, 1982), 842.

7 Gil Troy, *Morning In America: How Ronald Reagan Invented The 1980s* (Princeton, NJ: Princeton University Press, 2005), 286-287.

8 Bruce Michael Bagley, “The New Hundred Years War?: US National Security and the War on Drugs in Latin America,” in *The Latin American Narcotics Trade and U.S. National Security*, ed. Donald J. Mabry (New York: Greenwood, 1989), 46.



more by disadvantaged and, often, minority communities than powdered cocaine, which is more expensive and was used primarily in white, upper-middle class circles in the 1980s and 1990s.<sup>9</sup> That federal sentencing laws differentiate between crack cocaine and powdered cocaine, and apply harsher sentences to those found in possession of crack cocaine is significant. Much of Reagan's rhetoric centered around the claim that African Americans violated drug laws at a greater rate than white Americans did, which justified the huge disparity in arrest and incarceration rates. However, African Americans were, in fact, at the hands of sentencing laws that favored whites disproportionately: a person sentenced for possession with intent to distribute a given amount of crack cocaine received the same sentence as someone who possessed one hundred times as much powdered cocaine, notwithstanding the fact that physiologically, there were no differences between the two drugs except the physical form that each took. By virtue of crack cocaine being more prevalent in African American communities, African Americans began to be arrested and incarcerated at a far higher rate than white Americans under the Reagan administration.<sup>10</sup> This problem has yet to be resolved: the United States is home to 5% of the world's population, but 25% of its prisoners. Of this huge group of incarcerated individuals, approximately 33% are African American men. Upwards of 60% are people of colour.<sup>11</sup>

The situation has been strikingly similar in Canada. Though often left out of discussions about the war on drugs, Canada has been both an ally to the United States' war, and the instigator of its own battle. According to Eric Jensen and Jurg Gerber, two sociologists who have dedicated much of their academic careers to researching Canada's role in the war on drugs, the drug war in the United States was, in part, the "result of political claims makers attempting to boost their popularity...with a wholesome, safe issue to champion."<sup>12</sup> To many, it seemed ironic that within two days of the launch Reagan's "just say no" campaign, which was a media cornerstone of the war on drugs, Prime Minister Brian Mulroney announced his plans to launch a war on drugs in Canada. There is little evidence that shows that drug use in Canada increased drastically during the 1980s, as Mulroney claimed it

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9 Michael Coyle, *Race and Class Penalties in Crack Cocaine Sentencing* (Washington, D.C.: The Sentencing Project, 2002), 1-2.

10 Kenneth B. Nunn, "Race, Crime, and the Pool of Surplus Criminality: Or Why the "War On Drugs" was a "war on Blacks," in *The Journal of Gender, Race & Justice* Vol. 6 11 13<sup>TH</sup> Film, Documentary, directed by Ava DuVernay (2016: Netflix).

12 Eric L. Jensen and Jurg Gerber, "State Efforts to Construct a Social Problem: The 1986 War on Drugs in Canada," *Canadian Journal of Sociology*, Vol. 18, No.4 (Autumn, 1993), 453.

had. In fact, most objective measures point to the conclusion that drug use was on the decline.<sup>13</sup> The public was highly skeptical of Canada's "war," and, as such, the national drug strategy emerged quietly eight months following Mulroney's initial proclamation.<sup>14</sup> The basis of the drug strategy was punitive, and the majority of the funds allocated toward the "epidemic" went to law enforcement and incarceration, despite the quiet proposal of the policy to the public as a "kinder and gentler" approach to such issues than the United States would take.<sup>15</sup>

In 2006, Canadian drug laws got even tougher: The Safe Streets and Communities Act, also known as Bill C-10, introduced drastic changes to the ways in which drug crimes in Canada were handled.<sup>16</sup> As a means of combatting the increasing amounts of marijuana both entering and being grown in Canada, the bill increased federal funding for policemen and prisons, and moved money away from rehabilitation and preventative measures. In this sense, Canada and the U.S.'s goals have largely been the same: punishment blended with the utilitarian goal of deterrence and the justice-oriented goal of retribution. The bill introduced minimum sentences for possessing small amounts of narcotics, based on a scale of how dangerous each drug was perceived to be by the government, as well as for individuals who had committed a prior drug-based offense, among other things.<sup>17</sup> This approach was far more severe than the one Canada had taken in the past, and has had a significant impact on Canada's Indigenous community. Much like in the United States, where the African American community has been highly overrepresented in the prison system, Native Canadians have been as well: as of 2014, approximately 24% of incarcerated adults were of Native Canadian heritage. This figure is quite concerning, considering that Native Canadians make up just 4.3% of the total Canadian population.<sup>18</sup>

An area in which Canada and the United States have differed is in their for-

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13 Gerald B. Thomas, "Balance In Theory But Not In Practice: Exploring The Continued Emphasis On Supply Reduction In Canada's National Drug Control Policy," in *Perspectives On Canadian Drug Policy*, Vol. 1 (Kingston, ON: The John Howard Society Of Canada, 2003), 26-27.

14 Jensen and Gerber, "State Efforts To Construct A Social Problem," 455-459

15 Patricia G. Erickson, "Recent Trends In Canadian Drug Policy: The Decline And Re-surgence Of Prohibitionism," in *Daedalus* 121 (1992), 239-267.

16 Ramy Odeh, "Emerging From The Haze Of America's War On Drugs And Examining Canada's New Half-Baked Laws," in *Fordham International Law Journal*, Vol.16 (Fordham University School of Law: 2013), 3.

17 Government of Canada, *Safe Streets And Communities Act* (S.C. 2012, c.1).

18 Correctional Services Program, "Adult Correctional Statistics in Canada, 2013/2014," compiled by Statistics Canada.

eign policies toward Colombia and Mexico, the two drug producing countries that are perceived to have had the greatest impact on North America. In 1989, when Colombian presidential candidate Luis Carlos Galán was assassinated, and the Colombian government launched a subsequent offensive on the Medellín cartel, which is known as Colombia's most notorious drug gang, the United States offered \$65 million in emergency military aid to Bogotá.<sup>19</sup> The aid package was quickly supplemented with boots on the ground in Colombia (as well as other Andean countries). Though the Bush administration insisted that the U.S. would only send troops to nations that had explicitly requested assistance in the hemispheric drug war, it became evident quite quickly that Washington had no hesitations in exerting excessive amounts of pressure on the governments of drug producing nations to "request" military aid.<sup>20</sup> The decision by the Bush administration to increase the militancy of the drug war in Colombia and other Latin American countries was a negative one for two reasons: first, it increased the number of drug casualties in Latin America with little positive return in terms of the aims of the "war," and it allowed the fragile democracies in Latin American nations to be portrayed as "stooges of the United States."<sup>21</sup>

Such allegations by left-wing populist groups carried a fair amount of weight among nationalists who resented Washington's overbearing presence in their countries.<sup>22</sup> Canada's international presence in the war on drugs has not been nearly as great. With the exception of commitments to help fight the "Global War on Drugs" and a limited number of collaborative initiatives and treaties, the majority of Canada's drug policy has been internally focused. By 2000, 94% of Canada's federal drug control budget went towards law enforcement and constraining supply.<sup>23</sup> According to Dr. Diane Riley, who, in November 1998, prepared a report for Parliament on behalf of the Canadian Foundation for Drug Policy and the International Harm Reduction Association, "Canada actively participates in and supports [the]...violation of rights and resources, hiding behind the excuse that it is bound to do so by UN drug conventions...rather than demonstrating the tolerance that is supposed to be the defining feature of democratic societies, Canada has turned hundreds of thousands of its citizens into criminals and put many of them into

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19 Donald J. Mabry, "The Role of the Military in the War on Drugs," in *The Latin American Narcotics Trade and U.S. National Security*, ed. Donald J. Mabry (New York: Greenwood, 199). 75-88.

20 Carpenter, *Bad Neighbor Policy*, 35-39.

21 *Ibid.*, 40.

22 *Ibid.*

23 Thomas, "Balance In Theory But Not In Practice," 27.

prison for possession of illegal drugs.”<sup>24</sup> Though Canada’s involvement in the war on drugs has not been sensationalized nor played out in the international spotlight to the extent that the United States’ has, Canada’s war has certainly been grueling, and has had important implications on its citizens.

In recent years, the United States has turned its attention away from South America and towards Mexico, in the fear that it is beginning to resemble Colombia as a drug producer.<sup>25</sup> Though the United States has focused on securing the 3,200-kilometer long border that it shares with Mexico since the 1800s, the southern border was militarized two decades ago as a means of interdiction in the war on drugs. This effort has had little impact on the inflow of drugs from Mexico to the United States.<sup>26</sup>

Drug smugglers have, in fact, been at an advantage in the past twenty to thirty years due to the trade boom that NAFTA encouraged. Shipments have been more easily camouflaged, which has served as a means of circumventing the intensified law enforcement pressures at points of entry into the United States.<sup>27</sup> Recent years have witnessed large-scale efforts, both by the Mexican and the U.S. governments, to combat drug trafficking. Particularly since U.S. ambassador to Mexico, Jeffrey Davidow, provoked a pandemonium in 2000 by announcing that Mexico had become the world’s “main headquarters for drug traffickers,” the United States has become especially fixated on its southern neighbor, with minimal positive return.<sup>28</sup> A large problem within the Mexican drug trade, perhaps more so than in Colombia, is corruption. It has been estimated that approximately 20% of Mexican agents fighting the drug war domestically are, in fact, on the payroll of the drug gangs. As such, the United States has had a particularly difficult time cutting off Mexican supply, despite the billions of dollars that it has pumped into the country and into securing its own borders.<sup>29</sup> Much like in Colombia, the U.S. backed arrests and killings of top drug lords “have yet to have a meaningful impact in terms of decreasing the quantity of drugs entering the United States,” as the DEA has assumed

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24 Diane Riley, Canadian Foundation for Drug Policy, and International Harm Reduction Association, “Drugs and Drug Policy in Canada.” (Parliament of Canada: November 1998).

25 Carpenter, *Bad Neighbor Policy*, 170.

26 Peter Andreas, “A Tale of Two Borders: The U.S.-Mexico and U.S.-Canada Lines After 9-11,” (University of California at San Diego: Center for Comparative Immigration Studies, 2003), 3.

27 Peter Andreas, “A Tale of Two Borders: The U.S.-Mexico and U.S.-Canada Lines After 9-11,” (University of California at San Diego: Center for Comparative Immigration Studies, 2003), 3-4.

28 Carpenter, *Bad Neighbor Policy*, 171.

29 *Ibid*, 171-179.

that they would.<sup>30</sup>

Though cursory, this basic outline of the United States and Canada's domestic and foreign drug policies, and the history of the war itself, allows us to turn to a cultural analysis of the crusade against drugs in the American hemisphere. The first aspect of the cultural war that must be addressed is the term itself. According to William N. Elwood, a scholar of behavioral communication, "presidents often declare war against foreign enemies and win public support for such initiatives. Presidents also define domestic issues, and citizens look to presidents to construct a domestic agenda."<sup>31</sup> Ellwood's evaluation is that the war metaphor as used in relation to domestic policy has been highly ineffective in the United States, with the exception of the war on drugs. Though the concept of waging a war on a substance or a state of being seems inherently vexing, it has been noted by an extensive number of scholars that the presidents of the United States between 1968 and 2008 have been highly capable of convincing the public to rally behind their war. Some scholars have even gone so far as to say that the Reagan administration used rhetoric to create a "moral panic" in the United States as a means of fighting drugs, and that this panic has been perpetuated since.<sup>32</sup> According to David Lenson, author of *On Drugs*, "the conventional war rhetoric has it that drugs cause...violence by disinhibiting aggression among users. Proponents of legalization argue that the prohibition has driven the cost of drugs so high...that users must resort to criminal means in order to obtain the substances they want or need."<sup>33</sup>

By extension, and based on the historical evidence that points to the aggression of the American military in fighting the drug war, it could be argued that the term itself justifies violence at the hands of authorities. Without the use of the word "war," which explicitly denotes a battle of some sort, the violence that has characterized the United States' hemispheric siege would likely not have been deemed acceptable (at least not at the hands of the government) and, thus, would not have occurred so extensively and for so long. The war metaphor has also allowed for the demonization of drugs as the enemy, which has contributed not only

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30 Ibid, 192.

31 William N. Elwood, "Declaring War on the Home Front: Metaphor, Presidents, and the War on Drugs," in *Metaphor And Symbolic Activity*, Vol. 10, No. 2 (Lawrence Erlbaum Associates, Inc., 1995), 93.

32 James E. Hawdon, "The Role Of Presidential Rhetoric In The Creation Of A Moral Panic: Reagan, Bush, And The War On Drugs," in *Deviant Behavior: An Interdisciplinary Journal*, Volume 22 (Taylor & Francis, 2001), 419-421.

33 David Lenson, *On Drugs* (University of Minnesota Press: 1995), 167.

to the cultural condemnation of drugs in hemispheric American society, which stigmatizes those seeking treatment for substance addictions, but has also bolstered the notion that more money and resources must be allocated towards the war as a means of defeating a fabricated foe. Despite the closeness of Canada and the United States' relationship prior to Prime Minister Mulroney launching Canada's war on drugs in 1984, it seems highly likely that the moral panic that Mulroney attempted to create in Canada was the product of a cultural export from the United States. It is unsurprising, then, that visual cultural portrayals about the highly dramatized war on drugs began to be produced and consumed in the U.S. and Canada in the years that followed both nations launching their respective wars, triggered almost undoubtedly by the theatrical, sensationalist siege that was occurring throughout the hemisphere. Such portrayals, which evidence the "dialogical relationship within the mass culture of capitalism, where the sanctioned institutions of information and literacy strive to reform and control cultural meanings, while the popular market circumvents it, [and sells] whatever is deemed a hot product," have undoubtedly played into the rousing war on drugs that North American politicians have aimed to sell since 1968.<sup>34</sup>

On August 28<sup>th</sup>, 2015, Netflix released *Narcos*, an original series. The official description of the show reads as follows: "The true story of Colombia's infamously violent and powerful drug cartels fuels this gritty new gangster drama series."<sup>35</sup> The ten-episode release solidified narconovelas as a subgenre in the realm of online television. Though this subgenre has existed within soap operas for decades, *Narcos* brought the genre to the forefront of the contemporary North American television consciousness, which, in many ways, can be construed as a mediated public sphere. According to Jesús Martín-Barbero, "both inside and outside of Latin America, the soap opera has [been] met with enormous success among television viewers. It is a genre which has catalyzed the development of the Latin American television industry, and, at the same time, 'cross-bred' new audiovisual technologies with the narrative anachronisms that form an integral part of the cultural life of the peoples of that continent."<sup>36</sup> Though *Narcos* differed from the classic construction of the soap opera in that the producer did not interrupt the serialization of the narrative, the series has fit into many other aspects of the im-

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34 Aldona Bialowas Pobutsky, "Peddling Pablo: Escobar's Cultural Renaissance," in *Hispania*, Vol. 96, No. 4 (John Hopkins University Press: December 2013), 686.

35 Netflix, *Narcos*, 2015.

36 Jesús Martín-Barbero, "Memory and Form In The Latin American Soap Opera," in *To Be Continued...*, ed. Robert C. Allen (London: Routledge, 1995), 276.



mensely popular television framework. In addition to the dramatic narrative that hooks viewers on *Narcos*, the Netflix series has accomplished what many of the best and most classic soaps have before it: the series has encouraged viewers to “extend the pleasure of watching to the pleasures of talking about what they watch.”<sup>37</sup> In the thirty-five days that followed the first season of *Narcos*’ release, the show attracted 3.2 million viewers.<sup>38</sup> A simple Facebook search of the phrase “*Narcos*,” with results tailored to August 2015, generates hundreds of thousands of hits from all around the world, both from individuals, and from various media outlets offering their opinions on the dramatic new series. The same search in September 2016, when the second season was released, generates comparable results. This speaks to the huge volumes of people who are not only watching the show, but also engaging with it through discussion on social media. Needless to say, the series has been hugely popular. As of June 2016, approximately 5.2 million Canadian households paid for a Netflix subscription, which amounts to nearly half of Canadian households, according to Statistics Canada data that demonstrates that there are approximately 13 million households in the country.<sup>39</sup> As of July 2016, approximately 47.5 million households in the United States held subscriptions.<sup>40</sup> These statistics evidence that *Narcos* is widely available to a large audience in North America. The large-ranging accessibility of the series, combined with the notion that the platform is ever growing, raises the question of what the series is actually portraying to its large North American audience, and how truthful the “true story” of Pablo Escobar and the Medellín Cartel really is.

The *Narcos* narrative is intricately woven. It is only after viewers are exposed to the soft, charismatic, and unique aspects of many of the leading characters that they are portrayed in a negative light. Slowly, but not so slowly that viewers tire of the plotline, those charismatic individuals come to be depicted as greedy, murderous entrepreneurs who value nothing more than money. Throughout the series, which follows Pablo Escobar’s trajectory from his start in the cocaine business to his death at the end of the second season, viewers are exposed not only to delicately

37 Dorothy Hobson, “Soap Operas At Work,” in *Remote Control: Television, Audiences, and Cultural Power*, ed. Ellen Seiter, Hans Borchers, Gabriele Kreutzner, and Eva-Maria Warth (London: Routledge, 1989), 150-167.

38 Victor Luckerson, “We Finally Know How Many People Watch Netflix Shows,” *Time Magazine* (January 14<sup>th</sup>, 2016), <http://time.com/4181496/netflix-ratings-nbc/>.

39 CBC News, “Netflix Now Has More Than 5.2 Million Customers In Canada, Report Suggests” (June 15<sup>th</sup>, 2016), <http://www.cbc.ca/news/business/netflix-streaming-cord-cutting-1.3636305>.

40 Statista, “Number of Netflix Streaming Subscribers in the United States from 3<sup>rd</sup> Quarter 2011 to 3<sup>rd</sup> Quarter 2016 (2016).

re-enacted battles between the cartels and the Colombian authorities, but also to the personal lives of the many individuals involved in the Colombian battlefield of the United States' war. The story is carefully planned out, intricately pieced together, and unassailably dramatic. Each episode ends with a new drama that the viewer knows will only be explained in the next segment. Though *Narcos* "does a better job than most narco-dramas in getting across the brutal seediness of the drugs business," the writers, according to Prospero (The Economist's books, arts, and culture review) took a fair amount of literary license.<sup>41</sup> The series depends on dramatic realism, but this realism comes into question particularly in the context of portrayals of violence perpetuated by Colombian authorities and the DEA. This is inherently problematic considering the notion that "whichever version [of historical events] the scriptwriters of *Narcos* go for will become the historical record as far as millions of its viewers are concerned."<sup>42</sup> The same line of thought can be extended to which events are dramatized and which are left out the series. With just over ten hours of airtime per season, and several decades of history to get through, the producers of the hit series have undoubtedly had to make choices as to which histories will be dramatized and which will be excluded. Given *Narcos*' large audience, the ever-growing, dynamic nature of Netflix, and the historical-cultural narrative that is being portrayed, the producers hold a large amount of gatekeeping power in their hands. Particularly in Canada, where centers for the study of Latin America are few and far between, but also in the United States, where a militarist or "white saviour" narrative may be preferred to a more objective, fact-based history in the context of the war on drugs, the responsibility of the producers of such a series to create an accurate cultural portrayal is great. To accept the narrative that *Narcos* has created unquestioningly is to be complicit in the militancy of the United States in the war on drugs – not only because of the acceptance of an incomplete history, but also because of the simple and monolithic acceptance of the immorality of drugs.

Dramatizations, if not romanticizations, of Pablo Escobar and the war on drugs in general are not uncommon. Though Escobar died in 1993 and took with him "the heyday of Colombia's populist drug lords," the controversy that he created has stirred up somewhat of a "cultural renaissance."<sup>43</sup>

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41 Prospero, "Fact and Fiction In The War On Drugs," in The Economist (September 1<sup>st</sup>, 2016), <http://www.economist.com/blogs/prospero/2016/09/real-narcos?fsrc=scn/fb/te/bl/ed/therealnarcosfactandfictioninthewarondrugs>.

42 Ibid

43 Bialowas Pobutsky, "Peddling Pablo: Escobar's Cultural Renaissance," 684

Escobar's life and story has been of unceasing curiosity, both within the American hemisphere and beyond it. In addition to *Narcos*, there have been countless other narconovelas aired, as well as a multitude of literary accounts published in the past fifteen years. According to Aldona Bialowas Pobutsky, a professor of modern languages and literatures, with a focus on gender and drug studies, "writing about [Escobar] has proven a profitable enterprise... [He] has entered the world of outlaw folklore, becoming a sought after – albeit highly controversial – commodity that speaks to popular tastes."<sup>44</sup> Much of the literature about Escobar, both written and visual, has centered around the intricacies of his personal life, much like *Narcos* has. These portrayals have come at the expense of disclosures of Escobar's massive impact on Colombian society, and, more broadly, on the American hemisphere. As aptly put by Bialowas Pobutsky, "the final product, peppered to differing degrees with sensationalism, melodrama, personal insight, and, of course, references to Colombia's biggest criminal, belongs to popular or tabloid journalism in that the real-life criminal is both personalized and fictionalized through subjective storytelling and an almost in-existent referentiality."<sup>45</sup> Though the details may vary from story to story, if such cultural portrayals are blindly consumed as the complete narrative of the war on drugs, they can have harmful effects both in terms of how they shape perceptions of Colombia and Latin America, but also in terms of how they prompt consumers to contemplate the United States' role in the war on drugs. While utilizing Escobar's thrilling story in literature is by no means wrong, and can even be perceived as positive in that the genre may invite North Americans to engage with Latin American literature and culture, if such portrayals are read or viewed without historical context, the risk of the consumer developing inaccurate stereotypes runs high.

Two similar, though less consequential, cultural portrayals of the United States and Canada's contemporary interactions with Latin America and drugs are *Border Wars* and *Border Security*. *Border Security* is the Canadian spin-off of *Border Wars*, which is the ninth most viewed National Geographic program in Canada. *Border Security*, which is also aired on National Geographic, does not make the top fifty.<sup>46</sup> Both are documentary television series that chronicle the experiences of border guards at different points on the U.S.-Mexico and Canada-U.S. borders.

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44 Bialowas Pobutsky, "Peddling Pablo," 685.

45 *Ibid.*

46 National Geographic, "Most Viewed Shows," <http://natgeotv.com/ca/shows/most-viewed?page=1>.

Each episode can be roughly broken down into three components: one segment on drugs, one on firearms or another contraband item, and one on illegal immigrants. Often, in the case of *Border Wars*, the portion on illegal immigrants also has to do with drugs coming into the United States. These segments, which feature Mexican migrants attempting to cross the border on foot, are typically highly sensationalist. They carry a distinct right versus wrong narrative, and portray the border agents who spot, and, subsequently, chase the groups of migrants as heroes. The show almost always ends with the gallant border agents stoically reflecting on the exorbitant dollar amounts of the drugs they seized and the staggering number of Mexican migrants that they stopped in a chase that seemed as though it would never end. The Canadian version is significantly less sensationalist. There is rarely a chase, the “drug busts” typically involve an officer finding a small bag of marijuana in a trailer driving into British Columbia, and “illegal immigrants” are usually turned away simply because they have a record of driving under the influence. The Canadian officers are far more forgiving than their U.S. counterparts, and they are not made out as heroes to nearly the same degree. The paradox that can be drawn between each national portrayal of the same job speaks volumes about Canadian perceptions of the war on drugs and perceptions of the war on drugs in the United States. As such, Canadians and citizens of the United States alike (as well as those who tune in from outside Canada and the U.S.) are internalizing a narrative that paints U.S. government officials as heroes because of their use of force in keeping out unwanted elements (be they immigrants, drugs, or immigrants who bring drugs) and a narrative that paints Canadian government officials as forgiving and understanding. Further, *Border Wars* implies that a catastrophic drug problem still exists within the United States, whereas *Border Security* indicates that the problem is nearly non-existent in Canada. While militarizing substance abuse in the United States through cultural portrayals is harmful, constructing a narrative that a drug problem does not exist in Canada is catastrophic for those who have suffered at the hands of Canada’s drug policies. Erasure of Canada’s war on drugs, and the history of racism that has come with it, only contributes to Canada’s progressive stereotype on the world stage, which is inherently harmful to those Canadians who do not benefit from the liberal policies that created the cliché. All three of *Narcos*, *Border Wars*, and *Border Security* have the troubling potential to embroil their viewers in a monolithic narrative of the war on drugs, thus making consumers of such cultural portrayals complicit in the war, simply by means of drawing them into the moral panic that Presidents Nixon and Reagan aimed to create several decades ago.

The implications of excluding Canada from meaningful discussion about the hemispheric drug problem – beyond visual cultural portrayals – are great. While there is an extensive literature on Canada’s drug policies, many of the Canadian academics that write such literature take an isolationist approach, or discuss the United States in passing as a means of comparison. A large portion of the literature discusses how Canadian legislation has negatively impacted citizens who suffer from addiction, and how this legislation has had a disproportionately negative effect on racialized minorities.<sup>47</sup> Though much of this work makes important recommendations as to how the government can better serve its citizens and address the very real problem of addiction, there is very little focus on Canada’s role in the international effort to sever the North American supply of drugs. Shockingly, titles such as “Neoliberal Globalization And The War On Drugs: Transnationalizing Illiberal Governance In The Americas,” a journal article by Dominic Corva, or “Drugs And Development: The Global Impact Of Drug Use And Trafficking On Social And Economic Development,” by Merrill Singer, make no mention of Canada’s role in the hemispheric war on drugs, despite the “transnational” or “global” approach that each claims to take, and focus exclusively on the United States and Latin America, with the occasional mention of opioids from Asia. Though any academic paper has space constraints, it is disappointing and unproductive that Canada is routinely ignored in discussions of the hemispheric undertaking that is the war on drugs. While it could be argued that scholars of Canadian studies, or Canadian scholars in Canada, have isolated their work from the hemispheric discussion as a means of giving Canada a larger voice in the conversation, it is my evaluation that this has had the opposite effect. When Canada is routinely excluded from the “global” or “transnational” conversation, a decades-old history of the Canadian government imposing harmful policies on its citizens is erased.

Canadian exclusion from the hemispheric drug conversation has likely contributed vastly to the categorical progressiveness that often underscores the narrative of Canada’s role on the world stage. Fuyuki Kurasawa noted that a key aspect of the americanity debate is acknowledging the differences and similarities between the nations that compose the American hemisphere: “the differentia specifica of American society’s results from how they have structured syncretic elements to form pluralized cultural configurations, not from whether or to what extent they

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47 Dana Brothers, “Drug Policy in Canada: War if Necessary But Not Necessarily War,” in *Perspectives On Canadian Drug Policy*, Vol. 1 (Kingston, ON: The John Howard Society Of Canada, 2003), 43-50.

resist such syncretism in the name of national authenticity or the preservation of traditions.”<sup>48</sup> While it would not be a positive contribution to the americanity discussion to simply lump Canada in with the United States as an enemy of minorities and an enemy of progressivism, as neither country can be entirely characterized as such, it is not positive, in any sense, to ignore Canada’s contribution to the war on drugs as a means of highlighting the differences between Canada and the United States. Some of the narcotic policies in Canada were, in fact, quite different than those in the United States – particularly in terms of foreign policy toward Colombia and Mexico – but to say that Canada has always taken a rehabilitative rather than punitive approach to controlling narcotics would simply be incorrect. Unfortunately, this is the language that is often used in academic discourse that does mention Canada and the United States, thus furthering the notion that Canada is inherently progressive.

Though some scholarship has proven to be quite promising as a means of furthering this important discussion, with some authors even going so far as to state that “examining the countries together provides a better picture of the path each country should take, and the lessons that can be learned from cross-border allies,” it is essential that academics continue to study this important field in the years to come, both for the sake of the Canadians who are adversely affected by the war on drugs, and for the sake of the americanity discussion, which is a key aspect of developing Canadian identity in the academic world.<sup>49</sup> Further, though Canada’s role in the hemispheric war on drugs has largely been a domestic one, the similarities in domestic policy to the United States, and the consumption of North American visual culture that perpetuates the stereotypes of the war on drugs lead to the conclusion that Canada has, in fact, been an ally of the United States in the hemispheric war. Because of the United States’ continental cultural hegemony, when Canadians consume the same cultural portrayals of the war on drugs as their southern neighbors, and accept similarly stringent government policy that has proven to be harmful to so many of their compatriots, the war on drugs is perpetuated on a hemispheric level. Despite the perception of progressiveness that may result from Canada’s non-involvement in the internationally dramatized war on drugs, Canadian complicity in the war has undoubtedly contributed to a “north

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48 Fuyuki Kurusawa, “Americanity and the Prospects of a Hemispheric Social Imaginary,” *Journal of Intercultural Studies* (2008), 349.

49 Odeh, “Emerging From The Haze Of America’s War On Drugs And Examining Canada’s New Half-Baked Laws,” 8.



versus south” and “moral versus immoral” dynamic in the American hemisphere in terms of drug policy. Perhaps a larger wealth of resources on Canada’s role in the hemispheric war on drugs, as well as a more realistic set of cultural portrayals, would assist in making explicit the discrepancies that exist surrounding Canada’s function in the United States’ war.

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*The Charter V. Female Judges*

Which has the greatest impact on the way that gender and sexuality based cases are decided?

Emma Gunther

## THE *CHARTER* V. FEMALE JUDGES:

### Which has the greatest impact on the way that gender and sexuality based cases are decided?

**T**his investigation will seek to determine whether the introduction of the *Charter* or an increased number of female judges has had a greater impact on verdicts relating to gender and sexuality cases. In order to make a determination, a cross-section analysis of two gender and sexuality based cases will be selected from three different periods of history. The first period to be examined will be the pre-*Charter* era, which will be defined as lasting from 1875, the time of the Court's creation<sup>1</sup> to 1981, the last year before the introduction of the *Charter*.<sup>2</sup> The cases examined in this first period cases were not judged by women. A second set of cases will be examined from the post-*Charter* area, although these cases involve limited participation of female judges (one or two). The final set of cases come from the post-*Charter* era, and have a relatively high number of female judges on the Court. Upon examination of the three periods, it will become evident that while the *Charter of Rights and Freedoms* had a positive impact on upholding women's rights in the Supreme Court of Canada, the impact of a larger proportion of female judges was greater.

Hearing and deciding upon a case is a lengthy and complex process in the Supreme Court of Canada. First, each party and intervenor submits a factum with reasonings and evidence. The oral arguments are heard about eight months later. Judges then meet in conference to discuss the case, and the outcome is determined by majority vote among the judges. One of the concurring judges writes a draft of the reasons behind the decision. The other judges review the draft and may submit memos, and a final decision is announced. Although protections are in place to ensure that judges' decisions are made objectively,<sup>3</sup> there exist several theories about how judges make decisions.<sup>4</sup>

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1 Supreme Court of Canada, "Creation and Beginnings of the Court," Supreme Court of Canada, November 24, 2016, , accessed March 17, 2017, <http://www.scc-csc.ca/court-court/creation-eng.aspx>.

2 *Canadian Charter of Rights and Freedoms*

3 Lori Hausegger, Troy Q. Riddell, and Matthew A. Hennigar, *Canadian Courts: Law, Politics, and Process*(Don Mills, Ontario, Canada: Oxford University Press, 2015).

4 C. L. Ostberg, *Attitudinal Decision Making in the Supreme Court of Canada* (Vancouver: UBC Press, 2014).



In Ostburg and Wetstein's examination, they deem that the probability of a liberal vote is the sum of a constant, a justice's ideology, a set of case facts, a set of parties and interveners, court control variables and an unexplained variance. They conclude that ideology appears to be significant, although not as strongly as in the United States. Furthermore, they identify three main models of judicial decision making:<sup>5</sup> 1. The Legal Realist Model, which assumes that judges abide by the plain meaning of the text and rely on precedent, 2. The Attitudinal Model, which assumes that judges are pursuing policy goals, and 3. The Strategic Model, which assumes judges work together to reach a unanimous decision. This investigation relies upon the attitudinal model as it compares the judge's decisions in different contexts. However, the arguments that the realist and strategic models make will not be eliminated from consideration.

### **The Pre-Charter Era**

To preface, although the pre-*Charter* era is defined as spanning 1875 to 1971, the cases to be examined, *Canada (AG) v. Lavell* and *Bliss v. Canada*, were purposefully chosen from towards the end of the period. This was done to control for societal factors that may have affected judicial decision-making, such as the Court's role and its powers vis-a-vis those of Parliament, and the precedent being used at time. It should be noted that the *Canadian Bill of Rights* was in place when each of these cases came before the Court. The *Bill of Rights* has been in place since 1960. In 1982, it was effectively replaced by the *Canadian Charter of Rights and Freedoms*. The *Bill of Rights* was meant to protect Canadians' rights, but ultimately failed to be effective because it was not entrenched, only applied to federal law, and was simply a statute and therefore could not override other laws.<sup>6</sup> Moreover, each case went before a panel of judges that was entirely male. Overall, these factors will prove to influence the court decisions of the pre-*Charter* era.

#### *Canada (AG) v. Lavell*

In 1973, *Canada (AG) v. Lavell* came before the Supreme Court of Canada. The case involved two women, Mrs. Lavell of the Wikwemikong Band<sup>7</sup> and Mrs. Bédard, who was from the Six Nations Indian Reserve.<sup>8</sup> Both women held Indian status under the Indian Act, until their respective marriages to non-Indigenous men lead to their removal from the Indian register under s.12(b) of the *Indian Act*.

5 Ibid.

6 Heather MacIvor, *Canadian Politics and Government in the Charter era* (Don Mills, Ont.: Oxford University Press, 2013).

7 Attorney General of Canada v. Lavell (August 27, 1973) (Lexum, Dist. file).

8 Ibid

In a previous case, Mrs. Lavell appealed the decision to have her name deleted from the Indian Register, arguing that s.12(b) was rendered inoperative under s.1(b) of the Canadian Bill of Rights, which recognizes “the right of the individual to equality before the law”; her initial appeal failed. However, when the case later went before the Federal Court of Appeal, it was determined that s.12(b) did, after all, conflict with s.1(b) of the Bill of Rights. Following Mrs. Lavell’s initial case, Mrs. Bédard moved onto a property left to her by her mother that stood on the Six Nations Indian Reserve after separating from her husband. She was later asked to leave and dispose of the property due to her loss of status. Based on the precedent of Mrs. Lavell’s case, Mrs. Bédard received a decision in her favour for her own similar appeal, in the Supreme Court of Ontario. However, both decisions were appealed from the Federal Court of Appeal in the Supreme Court of Canada. Ultimately, the majority of the nine judges decided that the Bill of Rights “was not intended to effect a virtual suppression of federal legislation over Indians”,<sup>9</sup> and that the issue at hand was not a women’s issue, but rather an Indigenous women’s issue. The women must not be compared to Indigenous men, but rather be regarded as equal when compared to other women. As such, neither woman received a decision in her favour. However, it is important to note that four of the nine judges dissented, saying that the words “without discrimination by reason of race, national origin, colour, religion or sex”<sup>10</sup> could not be ignored.<sup>11</sup> In the Supreme Court of Canada’s review of this case, women’s rights as outlined in the Bill of Rights were read narrowly.

#### *Bliss v. Canada*

The *Bliss v. Canada* case came before the Court in 1978. The appellant, Stella Bliss, had to leave her job four days before giving birth to her child. Due to the particularities of her situation, she did not fulfil the requirements of s.30(1) of the *Unemployment Insurance Act*, and so her application for unemployment insurance was subject to s.46 of the same act, which denied her access to unemployment benefits for a period of six weeks after childbirth. For this reason, both the Commission and the Board of Referees rejected her insurance claim. The Umpire under the *Unemployment Insurance Act, 1971* granted her appeal based on the notion that s.46 denied her “equality before the law” as guaranteed by s.1(b) of the *Canadian Bill of Rights* (notably the same section of the *Bill* that was examined in the *Canada (AG) v. Lavell* case). The Umpire argued that s.46 was discriminatory “by reason of sex, and, as a consequence, abridged the right of equality of all claimants in

9 Ibid

10 Canadian Bill of Rights, 1960

11 Attorney General of Canada v. Lavell (August 27, 1973) (Lexum, Dist. file).

respect of the unemployment insurance legislation”.<sup>12</sup> The Federal Court of Appeal set aside the Umpire’s decision, at which point Stella Bliss appealed to the Supreme Court of Canada. Unanimously, the (all male) court ruled that the *Unemployment Insurance Act* did not violate the *Bill of Rights*. This was based on the fact that the benefits of the *Act* were available to both men and women, and this case was specific to pregnant women; meaning, the act did not discriminate against women, but rather “pregnant and childbearing women”.<sup>13</sup> Therefore the affected women were not entitled to said benefits during the period of their pregnancy. The decision reads “any inequality between the sexes in this area is not created by legislation but by nature”.<sup>14</sup> Interestingly, the decision was overturned in the 1989 *Brooks v. Canada Safeway Ltd* case, after the introduction of the *Charter of Rights and Freedoms*.<sup>15</sup> Again, the scope of women’s rights recognized was so limited that pregnancy was not read as an gender-related issue.

### Pre-Charter Findings

Although both cases denied the appellants justice on the basis of s.1(b) of the *Canadian Bill of Rights*, the first was a nearly evenly divided decision while the second was unanimous. It is interesting to note that neither case would be decided as such today; the Bill of Rights has since been effectively replaced by the stronger *Charter of Rights and Freedoms*. Additionally, the *Indian Act* has since eliminated s.12,<sup>16</sup> and the new precedent set by the *Brooks v. Canada Safeway Ltd* would take priority over that of the *Bliss v. Canada* case. Each case discussed above was examined with a very tight reading of the *Canadian Bill of Rights*; in each case the appellants were considered not as women, but rather as representatives of very specific groups of women (Indigenous women or pregnant women). The issues that affected the appellants were not considered as issues affecting women, but as issues affecting those same specific groups, of which being female is only one defining factor. Throughout the examination and analysis of the following cases, it will become apparent that since the implementation of the entrenched *Charter* the Court has recognized a more comprehensive view of women’s rights. It is also interesting to note that of the three men who dissented in the *Canada (AG) v. Lavell* case, none were included in the group that heard the *Bliss v. Canada* case. Judges are meant to read the law in the way it was written, and be uninfluenced by outside factors.

12 *Bliss v. Attorney General of Canada* (October 31, 1978).

13 *Ibid.*

14 *Ibid.*

15 *Ibid.*

16 “The Indian Act”

That said, it may be that it is impossible for judges to totally free themselves of their personal opinions and the experiences.

With the examination of the following two sections, it will become increasingly obvious how little protection women once had for their rights in the pre-*Charter* era. These cases definitively display the shortcomings of the *Canadian Bill of Rights*. Although, a following examination of the *Charter of Rights and Freedoms* will demonstrate that it too does not completely protect women's rights, perhaps due to one gender being inherently unable to fully empathize with the other's issues. The two cases examined above represent the pre-*Charter* era, when not a single woman sat on the Supreme Court of Canada and the *Canadian Bill of Rights* was narrowly interpreted. These two observations demonstrate that a lack of female judges and the weak legal documents in use at the time were inadequate in protecting women's rights. The following section will demonstrate that both the *Charter* and the introduction of female judges granted women greater judicial protections for their needs, although the greatest influence was the inclusion of more women in the judicial process.

### **Post *Charter of Rights and Freedoms***

The *Charter of Rights and Freedoms* was entrenched in the *Constitution of Canada* in 1982.<sup>17</sup> Coincidentally, the first female judge on the Supreme Court of Canada was appointed in the same year.<sup>18</sup> Both the cases to be examined in this section, *R v. Morgentaler* and *Symes v. Canada*, had female judges presiding over the cases; one judge in the former, and two in the latter. However, due to the female justices representing a small minority on the judge's bench, their influence over a decision would have been limited. Although evaluating a *Charter* case that did not involve female judges may have led to a stronger conclusion, such a case was not available. The women's individual decisions will be examined and compared to the overall outcome.

#### *R v. Morgentaler*

The *R v. Morgentaler* case came before the Court several times, however this evaluation will strictly examine the case which was heard in October of 1986 and was decided in January of 1988. Bertha Wilson was the only female judge on the seven judge panel. Dr. Henry Morgentaler, along with Dr. Leslie Frank Smoling

<sup>17</sup> The Charter of Rights and Freedoms, 1982

<sup>18</sup> Tracey Tyler, "Bertha Wilson, 83: First female Supreme Court justice," Thestar.com, May 01, 2007, , accessed December 1, 2016, [https://www.thestar.com/news/2007/05/01/bertha\\_wilson\\_83\\_first\\_female\\_supreme\\_court\\_justice.html](https://www.thestar.com/news/2007/05/01/bertha_wilson_83_first_female_supreme_court_justice.html).

and Dr. Robert Scott, opened an abortion clinic in Toronto. At the time, for an abortion to be performed, a woman needed the approval of a therapeutic abortion committee of a hospital, as required by s. 251(4) of the *Criminal Code* (which has since been removed); the abortion clinic opened by these doctors did not comply with this, and as such the three were tried. The doctors questioned “the wisdom of the abortion laws in Canada and [asserted] that a woman has an unfettered right to choose”.<sup>19</sup> The appellants (the doctors) in the *R v. Morgentaler* case argued that s.251 conflicted with ss.2(a), 7, and 12 of the *Charter of Rights and Freedoms*, which guarantee freedom of conscience, security of the person, and the right not to be subject to cruel and unusual punishment or treatment.<sup>20</sup> They also argued that it was inconsistent with the equality clause s.1(b) of the *Canadian Bill of Rights*, which remains effective today. The trial judge dismissed the argument, and the Ontario Court of Appeal dismissed the appeal. The three doctors were eventually acquitted by a jury. The Crown appealed the acquittal, and the doctors cross-appealed (meaning that both parties requested a review of the lower court’s decision). The Court of Appeal set aside the appeal and asked for a new trial. The Supreme Court of Canada asked a series of seven questions regarding the constitutionality of s.251, and came to a 5:2 decision. It was determined that s.251 was unconstitutional by s.7 of the *Charter*, as s.251 “clearly interferes with a woman’s physical and bodily integrity. Forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference”.<sup>21</sup> It is important to our investigation to note that Bertha Wilson concurred with the decision.<sup>22</sup>

### *Symes v. Canada*

The *Symes v. Canada* case was heard in March 1993, and a decision was made the following December. It was heard by all nine judges, including two female judges, Claire L’Heureux-Dubé and Beverly McLachlin. The appellant, Elizabeth Symes, was a full time lawyer. She hired a nanny to care for her children while she was working between 1982 and 1985. She deducted the cost of the nanny as a business expense in her personal taxes for those years, which Revenue Canada allowed for 1982 and 1983. However, Revenue Canada eventually retroactively disallowed the deductions for all four years in notices of reassessment. Ms. Symes appealed,

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19 *R v. Morgentaler*, 1988

20 *Charter of Rights and Freedoms*

21 *R v. Morgentaler*, 1988

22 *Ibid.*

but the decision was reaffirmed. Ms. Symes argued that the relevant sections of the *Income Tax Act* violated s.15(1) of the *Charter of Rights and Freedoms*, which guarantees equality “before and under the law... without discrimination based on... sex”.<sup>23</sup> The Court debated whether or not childcare expenses could be deducted as business expenses, as Symes, “would not have incurred child care expenses except for her business, [however] the need which is met by child care expenses exists regardless of the appellant’s business activity”.<sup>24</sup> It was eventually decided that there was no violation of s.15 of the *Charter*, as while “women disproportionately bear the burden of child care in society, it has not been shown that women disproportionately incur child care expenses”.<sup>25</sup> Regarding the decision, the nine judges were split along gender divides, notably the two women were the only dissenters. Claire L’Heureux-Dubé, with Beverley McLachlin agreeing, wrote that ‘business expenses’ were defined “to reflect the experience of businessmen”, but now that women are increasingly part of the workforce “the meaning of ‘business expense’ must account for the experiences of all... Child care is vital to women’s ability to earn an income”.<sup>26</sup>

### Post-Charter Findings

This section is interesting because, of the two cases, one was decided in favour of women’s rights, and the later case was decided in the opposite manner. Although both cases were split decisions, it is interesting to note that in each case the female judges came down on the side of women’s rights. It is useful to consider that the earlier decision upheld women’s rights more decisively, suggesting that the change in judicial decision-making was not related to chronological adjustments in popular opinion regarding gender equality. When compared to the cases evaluated in the previous section of the investigation, it becomes obvious that women’s rights were much more heavily weighted in the Court’s decision making process after the introduction of the *Charter of Rights and Freedoms*. Even in the Symes case, the decision that ultimately did not allow her to claim her child care expenses as business expenses centred on the definition of a business expense, not a denial of the classification of her rights as women’s rights, as seen in the previous section.

However, it will be seen in the following section that women’s rights are considered more holistically when more women are sitting on the Court; this is likely due to the fact that, try as they may, male judges are frequently unable to see the

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23 *Charter of Rights and Freedoms*, 1982

24 *Symes v. Canada*, 1993

25 *Ibid.*

26 *Ibid.*



connection between a women's issue and all the intricate impacts it may have on her life. This particular situation seems to be showcased in the division of judges on the Symes decision; the female judges decided markedly differently than the male judges, likely due to a more intimate understanding of the experiences of working women. Of course, it is the goal of the factums (a documents submitted by the party and the intervenor submits with reasonings and evidence) to explain these impacts and argue for their significance. However, the argument for the differences between a female's and a male's understanding of an issue holds: an explanation does not provide as much understanding as experiencing the same situation first hand. This becomes clear when the Symes case is compared to the Morgentaler case. There is a marked improvement between the pre- and post-*Charter* eras when it comes to the upholding of women's rights in the Supreme Court of Canada. However, it will be seen once the following cases are examined that women's issues are better sympathized with when more women are present on the Court. While the *Charter of Rights and Freedoms* had a real and visible impact on decisions regarding women's issues, the introduction of more female judges further solidified women's rights in the Charter.

### **Increased Number of Female Justices**

This section will examine the cases *M v. H* and *Public Service Alliance of Canada v. Canada Post Corp.* Both cases involved four women on the Court's bench; note that this is not a majority, but the most significant proportion of the cases available. The evaluation of these two cases combined with a comparison to the two previously explored periods will be decisive in providing the conclusions of this examination.

#### *M. v. H.*

The *M. v. H.* case was heard by the Supreme Court in 1999, and was on appeal from Ontario. All nine judges heard the case, of which four were female. The women implicated in the case will be known simply as M. and H. The two were a lesbian couple who had been together since 1982, and started an advertising business together in the same year, however H contributed more to the business than did M. They bought property together for their business in 1983, and personal property together in the same year. They lived together in a house that H. had purchased prior to the beginning of the relationship. In the late 1980s, the couple faced financial difficulties related both to their business and their personal finances. H. took another job and mortgaged their home to help cover the expenses. In 1992,

their relationship ended and M. left their home and “sought an order for partition and sale of the house and other relief”.<sup>27</sup> She later also made a claim for support under the *Family Law Act*. Her claim brought into question the definition of a spouse as defined in s.29 of the same act, which included provisions for “a man and woman who are not married to each other and have cohabited . . . continuously for a period of not less than three years”,<sup>28</sup> which is argued to conflict with s.15 of the *Charter of Rights and Freedoms*, which included provisions for equality rights. The Supreme Court dismissed both the appeal and the cross-appeal, but temporarily suspended s. 29 of the *Family Law Act*. The section was suspended for a period of six months, in order to give Ontario a chance to amend the law. While the women did not receive the decision they desired, their case did play a part in bringing wider recognition of rights for couples in the same position.<sup>29</sup> S.29 has since been amended to define “spouse” as “either of two persons”.<sup>30</sup>

*Public Service Alliance of Canada v. Canada Post Corp*

In 2011, the Supreme Court of Canada heard the *Public Service Alliance of Canada v. Canada Post Corp.* case, which was on appeal from the Federal Court of Appeal. The case was heard by all nine judges, including four women (McLachlin, Deschamps, Abella and Karakatsanis). The issue before the court was a wage gap between two groups of Canada Post workers. The primarily-female clerical workers were paid less than a predominantly male group of Postal Operations workers.<sup>31</sup> An examination of the type of work each group performed confirmed that the required skills and demands of each job proved that the work of the two groups was of equal value. The Chief Justice spoke for the unanimous panel of judges stating they “would allow these appeals, with costs to Public Service Alliance of Canada in this Court and below”.<sup>32</sup> Consequently, Canada Post was ordered to pay out \$150 million dollars in damages, the value of half of the wages lost as a result of the discrimination against the female-dominated group of workers. It was determined that only half the wages would have to be compensated in order to account for possible uncertainties in determining the exact amount of the loss that they incurred.

Findings on the Post Charter and Increased Number of Female Justices

27 *M v. H*, 1999

28 *Ibid.*

29 *Ibid.*

30 *Family Law Act*

31 McKelvey

32 *Public Service Alliance of Canada v. Canada Post Corp*, 2011

Although the *M. v. H.* case did not, ultimately, serve the female appellants, this was largely to do with the explicitness of the plain text in the *Family Law Act* (that is to say, it could not be interpreted any other way). However, the nearly-half female court did take significant action in levelling the playing field for these two women in suspending s.29 to encourage an amendment. As to the *Public Service Alliance of Canada v. Canada Post Corp.*, the single drawback was that only half of the lost pay was recovered (for reasons explained above); but perhaps a larger payout would have been more appropriate to fully compensate lost wages due to a gendered pay gap.

Overall, the needs of the appellants were met with far more understanding when more women sat on the Court. Of course, neither decision presented in this section was entirely satisfactory; the same sex ex-couple did not receive the recognition they desired, and the female Canada Post employees were only compensated in half. However, the greater proportion of female justices had obvious and notable effects in the decision making process of cases. Of course, the fact that female justices held a minority in each case means that the male justices must also be given credit; the women did not make these decisions alone. As neither panel of judges had a female majority, the evaluation here must be connected to the strategic model of decision making (which assumes that judges work together to come to unanimous decisions) presented in the introduction of this investigation. Although the Chamber discussions are private, the results of these cases, as compared to the previous ones, suggests that the female justices may have been able to influence the male judges' decisions by convincing the males to join them in their opinions regarding the issues present in the cases. A shift in popular opinion, or a greater understanding of women's issues at the time may have also influenced the male judges' decision making. However, the cases evaluated were within a short time frame thus this argument may not hold too much weight seeing as shifts in popular opinion take time. Overall, the strategic model and coinciding involvement of more women appears to describe the shifts in more pro-women decisions.

It is interesting to consider whether or not the Canada Post employees may have received more compensation had even more women sat on the Court. This is of course not a suggestion that the Court ever be overwhelmingly female; that is equally unfair. However, the adverse effects of an overwhelmingly male court on decisions regarding women's rights and women's were demonstrated by the pre/post charter era cases examined above. There are significant differences in decision making between the pre-*Charter* era and the time at which women filled their de-

served half of the court. The role of the *Charter of Rights and Freedoms* cannot be ignored. However, it was not until nearly half of the Supreme Court of Canada was filled with female judges that the effects of a truly sympathetic court was seen.

### Conclusion

Although the introduction of the *Charter of Rights and Freedoms* was significant in positively influencing the way that gender and sexuality cases were decided in the Supreme Court of Canada, it was not so important as the increase in proportion of female judges on the Court. The pre-*Charter* Court seemed to mitigate the rights offered by the *Canadian Bill of Rights* by re-categorizing the cases as something other than women's rights cases. The time in history after the introduction of the *Charter of Rights and Freedoms* did not see the same lack of understanding of women's issues, but still the Court did not seem to completely grasp the full effects of women's issues in all areas of life. Of the periods examined, it was only after the entrenchment of the *Charter* and having female justices fill nearly half the court that greater empathy was exhibited towards women's issues. It is assumed that, as time progresses and women become more empowered, a female majority court is likely to come together. Perhaps at that time, this evaluation can be revisited with the intention of modifying, correcting or strengthening the conclusions.

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**Access to Safe Drinking Water in  
Canada's Northern Territories**

**Laura Wiebe**



## Access to Safe Drinking Water in Canada's Northern Territories

To think that Canada, a country that possesses twenty percent of the world's surface freshwater, has a serious water issue is nearly unfathomable. Seven percent of this water is renewable, giving Canada the fourth largest renewable freshwater supply in the world.<sup>1</sup> The country also possesses the 9th best rating on the Human Development Index.<sup>2</sup> One would assume, then, that Canada undoubtedly has safe drinking water for all, however this is simply false. Despite the statistics above, Canada struggles tremendously with water distribution to remote areas. Canada's inability to properly distribute water affects the North more than any other region. In particular, remote communities in the three territories are affected the greatest, with their residents' everyday lives often compromised due to water stress. These areas routinely go days, weeks, and sometimes years without access to safe drinking water. This paper will discuss the Canadian North and its constant struggle to access safe drinking water. Different methods of accessing clean water will be investigated, as well as an assessment of the legal obligation that the Canadian Government has to provide clean drinking water and look into the scarcity of drinking water on First Nations reserves in Canada.

Although this paper will mainly focus on water treatment issues in the territories, it is important to note that many northern reserve communities across the provinces are also struggling to get their hands on safe drinking water, particularly in Ontario and Alberta. However, to begin we will discuss the water treatment systems, or lack thereof, in the territories.

Historically, the Canadian territories, consisting of the Northwest Territories, Yukon, and Nunavut, have been sparsely populated. For example, Nunavut only has 37,100 inhabitants even though it is the largest Canadian province/territory in terms of landmass.<sup>3</sup> Although they contain a minimal percentage of the population, the territories can no longer be ignored when it comes to water treatment systems. As of 2013, only 18 percent of communities in the territories had piped water systems, and the other 86 communities relied on water that was trucked in

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1 Heather Loney, "Does Canada have enough water? Depends who you ask," Global News, July 16, 2013, <http://globalnews.ca/news/721301/does-canada-have-enough-water-depends-who-you-ask/>

2 "Human Development Index and its components," United Nations Development Programme, 2015, <http://hdr.undp.org/en/composite/HDI>

3 "Population by year, by province and territory," Statistics Canada, 2016, <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo02a-eng.htm>

on a daily or weekly basis.<sup>4</sup> Many communities, if they have water treatment systems at all, have systems that consist of above ground piping and small treatment plants. For example, the community of Inuvik, located about one hundred kilometers from the edge of the Beaufort Sea, on the Yukon/Northwest Territories border, uses a dual source water system. Although this type of infrastructure is unusual in most municipalities, it is common in the North. During the winter, the community draws water from the Mackenzie River, which is a short distance from the town.<sup>5</sup> However, in the spring, summer, and fall, the community draws from Three Mile Lake.<sup>6</sup> The reason for the differentiation in water collection between the seasons is because the above ground pipes that bring in water from Three Mile Lake would freeze in the winter months. Filtration is not offered at Three Mile Lake, which means it does not meet the current Canadian guidelines. Due to the high counts of minerals this system left in the water, it was not uncommon for residents to break out in rashes and dry skin, especially when the system changed over in the spring, to Three Mile Lake from the Mackenzie River.<sup>7</sup> Now thanks to a new nineteen-million-dollar treatment plant, Inuvik recently changed over to their new water treatment system on November 15th, 2016, solving many of these issues.<sup>8</sup>

Although Inuvik's water treatment issues seem to be solved for the moment, the same problems that they faced are seen throughout the territories. Most water treatment plants in the north do not feature piped systems, because it is simply too cold for them to operate year-round. Water treatment plants with piped systems often have issues with the pipes cracking and wearing down, due to the harsh weather. This brings us to the question that seems so difficult to answer: why is it so hard to provide these remote communities with clean, safe, and accessible drinking water? The simple answer to this question is the climate and weather present in these areas. For much of the year, communities in Canada's territories live with subzero temperatures, making it incredibly difficult to engineer infrastructure strong enough to endure such intense cold. In communities closer to the provin-

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4 Ken Johnson, "A Comparison of Water and Sanitation in The Canadian North and the American North," Western Canada Water Conference and Exhibition, 2013, [https://issuu.com/cryofront/docs/wcw\\_13\\_paper\\_ken\\_johnson\\_130806](https://issuu.com/cryofront/docs/wcw_13_paper_ken_johnson_130806)

5 Shawn Giiilck, "Water upgrade to cost \$13 million," Northern News Services Online, Aug. 14, 2014, [http://www.nnsl.com/frames/newspapers/2014-08/aug14\\_14wat.html](http://www.nnsl.com/frames/newspapers/2014-08/aug14_14wat.html)

6 Ibid.

7 Mackenzie Scott, "Inuvik's drinking water gets an upgrade thanks to new treatment plant," CBC/Radio Canada, Nov. 15, 2016, <http://www.cbc.ca/news/canada/north/inuvik-drinking-water-treatment-plant-opens-1.3851113>

8 Ibid.

cial borders, all systems must be able to endure both freezing and thawing, due to slightly milder weather.<sup>9</sup> In general, most small towns in the North rely on Potable Water Dispensing Units (PWDU), which are small-scale water treatment plants that only provide a fraction of the average amount of water used per capita in Canada.<sup>10</sup> Most often, especially in northern communities, a PWDU is installed for reasons such as the financial inability to install a full water treatment plant, inability to operate a water treatment plant due to lack of training, and desperation for a form of safe drinking water.<sup>11</sup> However, it is unrealistic to assume that these small water dispensers can provide sufficient amounts of water for a community. In order for adequate amounts of water to be distributed to all residents in the north, a significant amount of money must go into upgrading water treatment systems situated in less than perfect weather conditions.

Situations like the one stated above raises questions of financial security in the North. Who is in charge of making sure that all citizens and inhabitants of Canada have safe, clean, and accessible drinking water? There is no clear answer to this complicated question. In Canada, “the federal government has jurisdiction related to fisheries, navigation, federal lands, and international relations, including responsibilities related to the management of boundary waters shared with the United States, including relations with the International Joint Commission.”<sup>12</sup> It is unclear, however, if this also means the Federal government is responsible for facilitating the extraction and processing of clean drinking water. For now, it is thought that the supply of safe drinking water is a responsibility shared by the federal, provincial, territorial, and municipal governments. Most provinces keep updated reports on water conditions and report any sanitation issues regularly, however, the territories rarely come out with reports on the state of their drinking water. As of right now the Canadian Government has guidelines for what quality of drinking water is acceptable, but it does not have any form of legally binding guidelines.<sup>13</sup> In addi-

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9 Glen Prosko and David Lycon, “Challenges facing mechanical wastewater systems in the North,” *Environmental Science and Engineering Magazine*, Feb, 19, 2016, <https://esemag.com/wastewater/challenges-facing-mechanical-wastewater-systems-in-the-north/>

10 Paula Dawe, “Potable Water Dispensing Units: Experience in NL,” Newfoundland and Labrador Department of Environment and Conservation – Water Resources Management Division, 2008, [http://www.ecc.gov.nl.ca/waterres/training/adww/smalltown/13\\_paula\\_dawe\\_gander\\_2008\\_potable\\_water\\_dispensing\\_units.pdf](http://www.ecc.gov.nl.ca/waterres/training/adww/smalltown/13_paula_dawe_gander_2008_potable_water_dispensing_units.pdf)

11 Ibid.

12 Environment and Climate Change Canada, “Federal Policy and Legislation,” Government of Canada, 2016, <https://www.ec.gc.ca/eau-water/default.asp?lang=En&n=E05A7F81-1>

13 Emma Lui, “On Notice for a Drinking Water Crisis in Canada,” *The Council of Ca-*

tion to the apparent inability to produce federal water sanitation laws, the Harper administration removed protection of 99 percent of all lakes, rivers, and streams in Canada, by overhauling the Navigable Waters Protection Act.<sup>14</sup> This means that there are increasing amounts of money going into water intensive practices such as fracking, and less money is being used to protect and advance water security projects throughout Canada.

Many of these projects are desperately needed in the territories, but the territorial governments struggle to produce the funds to implement them. To implement a water treatment plant on a solid sheet of permafrost is incredibly difficult, causing the costs of the process to skyrocket. For example, Yellowknife, one of the largest cities in the North, had to put thirty million dollars into a new water treatment plant in 2015 after a month-long boil water advisory.<sup>15</sup> The northern community of Hay River is being forced to consider cutting water supply from their treatment plant to towns that surround them, as they cannot afford to supply water to multiple communities because the territorial government cannot supply them with the funds.<sup>16</sup> In the case of Hay River, the surrounding communities will have no access to water, let alone clean water, if they cannot use Hay River's water system in the future. As will be shown below, this would be a human rights violation. However, there have been promising announcements in the recent past, for example, current Prime Minister Justin Trudeau announced on March 22nd, 2016, that he was allocating 4.6 billion dollars to the improvement of First Nations infrastructure, including water systems.<sup>17</sup> This money will undoubtedly affect the northern region of Canada and First Nations reserves throughout the country. Nevertheless, it is unrealistic to think that this amount of money can fix all water security problems in the North. With the territories unable to end their financial insecurity, the answers to water insecurity will not be found in the next two or three years. Rather, it will take decades to truly resolve all of the inequality issues when it comes to wa-

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nadians, 2015, <http://canadians.org/sites/default/files/publications/report-drinking-water-0315.pdf>

14 Ibid.

15 Guy Quenneville, "Inside Yellowknife's new \$30M water treatment plant," CBC/Radio Canada, Sept. 22, 2015, <http://www.cbc.ca/news/canada/north/inside-yellowknife-s-new-30m-water-treatment-plant-1.3237887>

16 "Hay River threatens to cut off nearby communities." CBC/Radio Canada. Sept. 16, 2013. <http://www.cbc.ca/news/canada/north/hay-river-threatens-to-cut-off-nearby-communities-1.1855372>

17 Amanda Klasing, "Make it Safe: Canada's Obligation to End the First Nation's Water Crisis," Human Rights Watch, Apr. 13, 2016, <https://www.hrw.org/report/2016/06/07/make-it-safe/canadas-obligation-end-first-nations-water-crisis>

ter.

Having access to and receiving adequate amounts of safe drinking water is a basic human right. As stated by the United Nations at the 2012 United Nations Conference on Sustainable Development, “Water and sanitation are at the very core of sustainable development, critical to the survival of people and the planet.”<sup>18</sup> Canada participated in this conference and agreed to the goals and projections that were put in place. However, the territorial region of Canada has been neglected in terms of alleviation of water stress. Many communities, especially First Nations communities in the territories and northern regions of Canadian provinces have gone years experiencing water stress, with very little help being supplied. Water stress, as defined by the European Environment Agency, is when water stress occurs when the demand for water exceeds the available amount during a certain period or when poor quality restricts its use<sup>19</sup>. Although not found exclusively in the northern regions, a substantial portion of Canada’s “water stressed” population is north of cities such as Grand Prairie, Prince George, and Churchill. In 2014, there were 134 drinking water advisories in 88 First Nations communities in Canada. Ninety-six percent of these were continued advisories, meaning they had been in place for several years.<sup>20</sup> Nearly twenty percent of First Nations peoples in Canada live in compromised water situations, and seventy-three percent of all water systems in First Nations communities are at a high or medium risk of failure.<sup>21</sup> However, very little action has been taken to solve this problem.

Many of the compromised water treatment plants and water sources in the North are largely impacted by the harsh climate and climate change. Many small communities rely on streams and small lakes in order to obtain water throughout the year, especially during the spring months. However, rivers are drying up and glaciers are melting at an unparalleled rate which greatly affects how many communities receive water. For example, the small community of Kluane Lake, Yukon, has relied on the Slims River forever, but now the river is drying up and springtime

is increasingly dryer than normal.<sup>22</sup> Yukon Geological Surveyor Jeff Bond explains 18 “Sustainable Development Goal 6: Ensure availability and sustainable management of water and sanitation for all,” United Nations Sustainable Development Knowledge Platform, 2015, <https://sustainabledevelopment.un.org/sdg6>

19 “Water Stress,” European Environment Agency, 2017, <http://www.eea.europa.eu/themes/water/wise-help-centre/glossary-definitions/water-stress>

20 Irving Leblanc, “Canada’s Big Problem,” Water Canada, Mar. 22, 2014, <http://watercanada.net/2014/canadas-big-problem/>

21 Ibid.

22 Paul Tukker, “Retreating Yukon glacier makes river disappear,” CBC/Radio Canada, Jun. 17, 2016, <http://www.cbc.ca/news/canada/north/slims-river-dries-yukon-kluane-gla->

that the state of the river is not common and water levels are the lowest they have been in the last 350 years.<sup>23</sup> As glaciers melt, it is important to note that it is not only sea levels that will change. Garry Clarke, a professor of glaciology at the University of British Columbia, explains that, “the stream flow will change, the timing of peak streamflow will change, and the temperature of the streams will change.”<sup>24</sup> Another small town that feels that their water supply is in danger is Grise Fiord, Nunavut. This small town with a population of about 150 has no natural reservoir that they can draw from, so instead, Canada’s most northern community replenishes its seven-million-liter water supply tank with water from a nearby glacier each summer.<sup>25</sup> However, that glacier is melting, and although there is not an immediate threat, in the future it is very possible that the community of Grise Fiord will cease to exist because they cannot access water. Melting glaciers are becoming so common that people are starting to realize their catastrophic implications. When considering the implications that the arctic climate has on access to safe drinking water it is also important to understand that all of the land in the Canadian territories is under a thick layer of permafrost. Northern Canada, in particular, is continuously covered in permafrost that is sometimes several hundred meters thick.<sup>26</sup> This makes it nearly impossible to install underground water pipes, meaning many of the most northern towns and cities do not have access to piped water and wastewater systems, something almost all Canadians in southern Canada take for granted. Nearby in Alaska, the loss of permafrost has affected the Yukon River which also affects Canadians on the same parallel as Alaska. Ryan Toohey of the Department of the Interior’s Alaska Climate Science Center explained why the loss of permafrost is so detrimental to the global population in saying,

The thawing permafrost not only enables the release of more greenhouse gasses to the atmosphere, but our study shows that it also allows much more mineral-laden and nutrient-rich water to be transported to rivers, groundwater

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[cier-1.3639472](#)

23 Ibid.

24 Richard Lovett, “Melting Glaciers Mean Double Trouble for Water Supplies,” National Geographic, Dec. 21, 2011, <http://news.nationalgeographic.com/news/2011/12/1112-melting-glaciers-mean-double-trouble-for-water-supplies/>

25 “As glacier melts, Grise Fiord Arctic residents fear for water supply,” CBC/Radio Canada, Nov. 19, 2014, <http://www.cbc.ca/news/canada/north/as-glacier-melts-grise-fiord-residents-fear-for-water-supply-1.2840562>

26 S. Smith, “Trends in permafrost conditions and ecology in northern Canada,” in Canadian Biodiversity: Ecosystem Status and Trends 2010, Ottawa, ON: Canadian Councils of Resource Ministers, 2011, <http://www.biodivcanada.ca/default.asp?lang=En&n=137E1147-1>



and eventually the Arctic Ocean. Changes to the chemistry of the Arctic Ocean could lead to changes in currents and weather patterns worldwide.<sup>27</sup>

Permafrost also denies Nunavut the ability to use individual water wells and buried septic systems, which are common options in many of southern Canada's rural settings.<sup>28</sup> Although permafrost is an ongoing challenge for Canada's northern population, many communities are still able to have above ground PW-DU's, and/or truck water in on a daily/weekly/monthly basis. Each province and territory has its own challenges when it comes to water treatment and wastewater management. For example, in Nunavut, drinking water shortages are exacerbated by the ongoing crisis in astronomically high food prices, which makes bottled water completely inaccessible.<sup>29</sup> Nunavut also does not have any water protection legislation, which puts water at a greater risk in the near future because recently the National Energy Board approved seismic testing in the Baffin Bay and the Davis Strait.<sup>30</sup> Seismic testing is conducted in one of two ways: thumper trucks place a large weight on the ground and send shock waves through to collect data, or shot holes are drilled twenty or thirty feet below the surface and dynamite is placed into the holes. Both methods send sound waves into the earth, which are reflected off of the rock formations. This data is then captured by geophones on the surface and sent to a central location where the data is reviewed. This has the potential to put the groundwater sources in Nunavut at great risk. To the west of Nunavut, the Northwest Territories deals with somewhat similar issues when it comes to water resources. The Northwest Territories (NWT) are the only province or territory to make the right to safe drinking water a basic human right.<sup>31</sup> Much like Nunavut, there are environmental concerns when it comes to tar sands, large scale agri-businesses, mining projects, timber harvesting, and pulp production in and around the Mackenzie River basin. The Yukon, much like the NWT and Nunavut, is aware of the threat of fracking, however, they have the added element of a proportionally

27 US Geological Survey. "Permafrost loss changes Yukon River chemistry with global implications." ScienceDaily. Nov. 30, 2016. [www.sciencedaily.com/releases/2016/11/161130134301.htm](http://www.sciencedaily.com/releases/2016/11/161130134301.htm)

28 Kim Daley et al., "Municipal water quantities and health in Nunavut households: an exploratory case study in Coral Harbour, Nunavut, Canada," International Journal of Circumpolar Health 73 no. 1 (2014): (PAGE?) <http://www.tandfonline.com/doi/full/10.3402/ijch.v73.23843>

29 Lui, "On Notice for a Drinking Water Crisis in Canada," 2015.

30 National Energy Board, "Frequently Asked Questions: NEB approval of a 2D offshore seismic survey program in Baffin Bay and Davis Strait," Government of Canada, 2016, <https://www.neb-one.gc.ca/nrth/dscvr/2011tgs/nbpprvlfq-eng.html>

31 Lui, "On Notice for a Drinking Water Crisis in Canada," 2015.

larger First Nations presence. This gives a much different understanding and motive to keep the land pure, due to the strong connection to the land and water by First Nations peoples.

This leads us to discuss arguably the most pressing Canadian human rights issue that the country has seen since the closing of the last residential school in 1996. On First Nations reserves across the country, especially in the North, there are many people who do not have access to water, living in third world conditions. Two-thirds of all reserves in Canada have been under at least one water advisory in the past decade, showing this severe lack of basic resources.<sup>32</sup> To make matters worse, some of these water advisories have lasted for years. For example, the Neskantaga First Nation in Ontario has lived under a boil water advisory for over twenty years. The Nazko, Alexis Creek, and Lake Babine First Nations in British Columbia have had boil water advisories for over sixteen years as well.<sup>33</sup> Water in these communities is available, however it is not safe to consume without first boiling it. For instance, in October 2005, high E. coli levels in the drinking water supply of the Kashechewan Cree First Nation located near James Bay, Ontario led to a two year boil water advisory.<sup>34</sup> To counteract the E. coli, excessive chlorine was added to the drinking water, leading to an increase of skin conditions among children in the community.<sup>35</sup> Similarly, a water advisory has been in effect in Slate Falls Nation, Ontario since 2004 due to inadequate disinfection techniques and unacceptable microbiological levels.<sup>36</sup> The list of Indigenous communities in similar situations seems endless, while the frequency of water advisories is much lower in non-indigenous communities.

The federal government's neglect of water rights on reserves is unacceptable. Reserves fall under federal jurisdiction, yet the government has not implemented any water regulations for reserves. However, water regulations are in effect for the rest of the country. Under the Canadian Constitution, signed in 1867, the federal government has jurisdiction over "Indians and lands reserved for the

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32 Joanne Levasseur and Jacques Marcoux, "Bad water: 'Third World' conditions on First Nations in Canada," CBC/Radio Canada, Oct. 14, 2015 <http://www.cbc.ca/news/canada/manitoba/bad-water-third-world-conditions-on-first-nations-in-canada-1.3269500>

33 Ibid.

34 Alasdair Morrison, Lori Bradford, and Lalita Bharadwaj, "Quantifiable progress of the First Nations Water Management Strategy, 2001–2013: Ready for regulation?" Canadian Water Resources Journal / Revue canadienne des ressources hydriques 40 no. 4 (2015). <http://www.tandfonline.com/doi/full/10.1080/07011784.2015.1080124>

35 Ibid.

36 Levasseur and Marcoux.

Indians,” which means that technically First Nations chiefs and councils are accountable to members on reserves for providing services, including owning and operating water and wastewater systems on reserve.<sup>37</sup> However, all capital costs and a portion of operation and maintenance costs for systems come from federal government funding. This means that the Department of Indigenous and Northern Affairs Canada has most of the control when it comes to the management and security of water and wastewater systems on reserves.<sup>38</sup> Until there are regulations put in place that put First Nations communities and the federal government on the same page, future contracts will continue to be temporary fixes to devastating problems. Generally, the government will pay for 80 percent of the operation and maintenance costs for water-related infrastructure, leaving the remaining 20 percent to be funded by the reserve itself, without assessing whether or not the reserve can realistically afford to fund this portion. Lastly, funding for these projects has been particularly hard from 1995-2015, because the Department has an arbitrary cap that only allows for a two percent annual increase in base funding – regardless of the population, inflation rates, or general need.<sup>39</sup> Although these laws have changed, the effects of the policies are lasting and will continue to have effects on reserve communities for years to come.

It appears as though help is on its way for First Nations reserves. When Justin Trudeau was elected in October of 2015, his budget included two billion dollars towards water and wastewater infrastructure for First Nations communities.<sup>40</sup> Although Trudeau’s goal of clearing up all boil water advisories in his first five years in office is a lofty one, this is a step in a positive direction. However, this does not equate to implementation of governmental guidelines and standards of water and wastewater treatment plants on reserves. David R. Boyd of the David Suzuki Foundation writes that an increase in Federal jurisdiction over air and water pollution is needed, and control over air and water pollution should be a matter of concurrent jurisdiction between the provinces and Parliament, with the federal government possessing paramount powers.<sup>41</sup> If this is possible is yet to be seen, as it is also im-

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37 Klasing, “Make it Safe,” 2016.

38 Ibid.

39 Ibid.

40 Kristy Kirkup, “Liberal budget includes billions in new spending for aboriginal people,” CBC/Radio Canada, Mar. 22, 2016, <http://www.cbc.ca/news/indigenous/liberal-budget-billions-new-spending-aboriginal-peoples-1.3502942>

41 Boyd, David, “The History of the Right to a Healthy Environment in Canada,” David Suzuki Foundation, 2013, (PAGE?) <http://davidsuzuki.org/publications/reports/2013/right-to-a-healthy-environment-papers/>

portant to make sure that each and every community that is affected by any new legislation is consulted.

What is possible, however, is an increased effort by the federal and provincial governments to ensure that First Nations and northern communities across Canada are protected and given access to safe, accessible, and efficient water sources. In closing, one must understand that access to adequate drinking water is a basic human right. Certain members of First Nations communities, particularly those in the north, have spent their whole lives under boil water advisories and do not consume orders. The difference now, however, is that the UN is aware, and closely watching the progress or lack thereof throughout the north in regards to drinking water and water sanitation. The UN has publicly stated that they are concerned about the “restricted access to safe drinking water and to sanitation by the First Nations as well as the lack of water regulations for the First Nations living on reserves.”<sup>42</sup> Deputy Chief Randy Fobister of Grassy Narrows First Nation sums up the situation well: “But how can Canada lead while mercury poison sits in our river and while our families drink unsafe water for 20 years? It is time for Canada to walk the talk and act now to clean our river and provide safe tap water for our people.”<sup>43</sup> It is clear that Canada’s most northern communities are struggling with water systems and they have a right to government support. What will be done is yet to be seen, but it is clear that precise plans need to be executed sooner rather than later to keep northern and reserve communities thriving, to uphold health and safety standards, and to respect basic human rights.

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42 Klasing, “Make it Safe,” 2016.

43 “Canada violates human Rights, northern Ontario First Nations tell UN,” CBC/Radio Canada, Feb. 22, 2016, <http://www.cbc.ca/news/canada/thunder-bay/first-nations-water-woes-un-1.3458140>

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**Conflicting Sovereignty:**  
*The British Imperial Project, the  
Creation of the Canadian State, and  
Indigenous Nationhood*

**Raegan Kloschinsky**

## **Conflicting Sovereignty: The British Imperial Project, the Creation of the Canadian State, and Indigenous Nationhood**

**T**he complicated history of intersecting sovereignty in the land that is now Canada dates back to the seventeenth century. In regards to the British, their sovereignty claims are cemented in the formation of the Hudson's Bay Company (HBC). Chartered in 1670, the Hudson's Bay Company grew to control, with very unclear sovereignty claims, much of modern Canada, overlapping with numerous indigenous groups. The HBC, established by the fur trade, worked in tandem with indigenous societies.<sup>1</sup> As the HBC grew and extended inland and westward, it increasingly became an imperial operation and supporter of settler colonies. Eventually the Hudson's Bay sold Rupert's Land to the newly formed Canadian state, further complicating the question of land and sovereignty. The Hudson's Bay Company held a tenuous claim to land already inhabited. With the sale of Rupert's Land, what happened to the indigenous communities already existing and self-governing on Canada's "new" land? Complicating this question were complex understandings of land ownership and political philosophies, which only augmented conflict. These disputes continue to this day and colour political debates across the country. However, this is not a phenomenon unique to Canada. In fact, these issues of conflicting sovereignty exist in all of Britain's former settler colonies and only prove how the foundation of the Canadian state was an extension of the British imperial project, leading to the erasure of indigenous history and sovereignty. The Canadian government merely further perpetuated the practices of the British Empire in its settlement and assimilation policies, permanently marring the political landscape of the country.

European interactions with indigenous people in modern Canada long predate the invention of the Canadian State. Missionaries and fur traders were present in North America since the early seventeenth century, coming to interact closely with indigenous people. The influx of these European men forged co-dependent relationships between the Europeans and indigenous communities. As time progressed, the power dynamic of this alliance shifted towards the settlers due to changing demography. As Canada became a colony, settlement, agriculture, and trade further pressured the increasingly marginalized indigenous communities. Even so, there was a long-standing tradition of treaty making with indigenous

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<sup>1</sup> Elizabeth Elbourne, "The Canadian Fur Trade and Its Consequences," (lecture at McGill University, Montreal, QC, October 17, 2016).

people in what is now Canada. This practice started between the French and the Iroquois Confederacy in 1701 with the Treaty of Albany, and was continued by the British following the Seven Years War.<sup>2</sup> The British Crown negotiated treaties with Canada's First Nations and the Dominion of Canada inherited their terms and practices. These treaties are the foundational documents of the legal framework of indigenous relations in Canada, but originate in Imperial Britain. Furthermore, these treaties, according to current Canadian government statements, "established peaceful relations during times of colonial war, helped stimulate prosperous economic and commercial trade relations, and allowed for the organised expansion of Canada."<sup>3</sup> Essentially these treaties provided the legal justification for colonising the future state of Canada.

However, largely, the parties involved interpreted the treaties differently, as they often contained contradictions. European and indigenous perceptions of land and property were wholly different; in indigenous societies land "ownership" did not inherently require cultivation.<sup>4</sup> Many indigenous groups viewed treaty agreements as consent to share their lands, believing in collectivism of resources.<sup>5</sup> Given these opposing understandings of landholding, treaties were complicated and confused. Notably, the Royal Proclamation of 1763 by the British, following the Seven Years War, set a precedent for inconsistent understandings of sovereignty and land ownership. The Proclamation created a dividing line between settlers and indigenous people; there could be no settlement or trade without the permission of the Indian Department and the British Military strictly controlled the boundary.<sup>6</sup> With this action, the British Crown also essentially granted themselves a monopoly on all future land speculation. The Proclamation outlined strict protocol for relations with indigenous people and the purchase of their land.<sup>7</sup> Only the Crown could purchase land from indigenous groups and only in an official, mandated way. Settlers could not enter the "Indian Territory" or conduct trade without a license from the

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2 "A History of Treaty-Making in Canada," last modified September 2, 2011, <http://www.aadnc-aandc.gc.ca/eng/1314977704533/1314977734895>.

3 "Summaries of Pre-1975 Treaties," last modified August 29, 2013, <http://www.aadnc-aandc.gc.ca/eng/1370362690208/1370362747827>.

4 Elizabeth Elbourne, "Settler Ideologies of Land," (lecture at McGill University, Montreal, QC, September 28, 2016). John Locke in particular espoused this view of property law: in order to own land, one must invest labour in it. British and indigenous conceptions of land and property were irreconcilable.

5 Ibid.

6 "A History of Treaty-Making in Canada."

7 Ibid.

governor.<sup>8</sup> This was commanded in an effort to assuage indigenous anxieties of settlers encroaching on their land, but realistically, began to limit and control indigenous rights to self-govern. This law recognised indigenous sovereignty, and was the first public recognition of indigenous land rights, yet at the same time, facilitated British claims to jurisdiction. The “Indian Territory” was described as, “for the use of the said Indians,”<sup>9</sup> thusly implying underlying British ownership of their land. The language and terms outlined in the Royal Proclamation became the basis of treaty making in future Southern Ontario after 1783, under British control.<sup>10</sup> Despite specifically exempting Rupert’s Land from the scope of the Proclamation, it was used in negotiating the Numbered Treaties in the Canadian West between 1871 and 1921.<sup>11</sup> Therefore, the Proclamation had lasting influence on Canadian law, despite the fact that it predates Confederation by over a century, and being completely based in British colonial policy.<sup>12</sup>

Consequently, this sort of conflicting treatment of indigenous rights continued through many treaties into the nineteenth century, culminating in federal codification with the Indian Act of 1876.<sup>13</sup> The nineteenth century resulted in numerous land cessation treaties in the Great Lakes region.<sup>14</sup> Policy was based on a desire to keep positive commercial and military relations with indigenous groups as colonisation progressed.<sup>15</sup> The shape of modern Southern and Eastern Ontario can largely be attributed to British imperial interests in trade and protecting their colonies. The language of these Upper Canada Land Surrenders show a somewhat generalised gifting of goods and protections in exchange for indigenous support of the Sovereign and permanent disposal of their rights to their land.<sup>16</sup> For example, in Michilimakinak Island, No. 1, the treaty begins:

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8 J.R. Miller, “Royal Proclamation of 1763,” in *The Oxford Companion to Canadian History* (Oxford: Oxford University Press, 2004).

9 Ibid.

10 Ibid.

11 Ibid.

12 Ibid.

13 Brian Titley, “Indian Act” in *The Oxford Companion to Canadian History* (Oxford: Oxford University Press, 2004).

14 “A History of Treaty-Making in Canada.” Aboriginal Affairs and Northern Development Canada, “Treaty Texts,” last modified August 29, 2013, <http://www.aadnc-aandc.gc.ca/eng/1370373165583/1370373202340>.

15 Ibid.

16 Aboriginal Affairs and Northern Development Canada, “Treaty Texts,” last modified August 29, 2013.

“By these Presents We the following Chiefs Kitchi Negou or Grand Sable, Pouanas, Kousse and Magousseihigan in behalf of ourselves and all others of our Nation the Chipwas, who have or can lay claim to the hereinmentioned Island, as being their Representatives and Chiefs, by and with mutual consent do surrender and yield up into the hands of Lieutenant Governor Sinclair, for the behalf and use of His Majesty George the Third, of Great Britain, France and Ireland, King, Defender of the Faith, His heirs, executors, administrators for ever, the Island of Michilimakinak.”<sup>17</sup>

At times, these agreements were entered into without full understanding of the terms or a disagreement in interpretation of what the British owed the indigenous people. These agreements, enacted by the British, were crucial to the makeup of what was to become the Dominion of Canada and set the foundation for the acknowledgement, or rather misrecognition, of indigenous sovereignty perpetuated by the Canadian state.

Correspondingly, as the colonial climate of North America stabilized and became more peaceful, the British perception and desires for indigenous relationships changed. Following the War of 1812, treaties markedly began to focus on the dispossession of land for “civilizing” aims.<sup>18</sup> Indigenous people were to be brought under the British Empire, cementing Christianity and agriculture in First Nations communities. The role of British Indian Agents shifted to encouraging aboriginals to abandon their traditional lifestyles in favour of adopting agricultural and sedentary tendencies, essentially becoming more British.<sup>19</sup> Here is the root of the assimilative and subsequent eradicated policies of the Canadian government, which distinctly emerged as a direct continuation of imperial policy. The treatment of indigenous people by the Canadian state, was from its outset, merely an extension of the British Empire and its remoulding of the world in the image of Britain.

Ultimately, this past practice of treaties and the terms outlined in them compounded in the creation of the Dominion of Canada in 1867. Under the British North America Act, the federal Canadian government became responsible for “Indians and Lands reserved for Indians.”<sup>20</sup> This drastically changed aboriginal-colonial relations, shifting to a ward-like view of indigenous peoples, but fundamentally, was still based on historical precedence. The new federal government inherited the

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17 “Treaty Texts,” Michilimakinak Island, No. 1.

18 “A History of Treaty-Making in Canada.”

19 Ibid.

20 “A History of Treaty-Making in Canada.”



structures and policies of the old colonial offices.<sup>21</sup> The Department of Indian Affairs came to regulate indigenous people in a national context, consolidating past British colonial policy in the Indian Act of 1876.<sup>22</sup> In many ways, the Indian Act, which is still in effect today, with amendments, solidified the disenfranchisement of indigenous people in Canada. The Indian Act came to “control and influence nearly all aspects of daily life for Aboriginal peoples in Canada.”<sup>23</sup> Particularly, the Indian Act employed paternalistic rhetoric, making the assumption indigenous people “required protection from land speculators and careful tutelage to become self-reliant, Europeanized Christians.”<sup>24</sup> In this policy, indigenous society and customs were assumed to be ignorant and in need of improvement, thus aiming to eradicate their culture in favour of assimilation into Euro-Canadian society.<sup>25</sup> The Indian Act also defined “Indian status” making all declared “Indians” wards of the state, forbidding them to vote or consume alcohol.<sup>26</sup> This action completely negated aboriginal notions of identity and infantilized indigenous people, replacing their selfhoods with Eurocentric interpretations, behaviour arguably learned directly from the British. Furthermore, in providing some provisions for self-government and designation of reserve land, the Indian Act determined the affairs and effectively, lives of indigenous communities. State authority was applied to the aboriginal population of Canada and through amendments to the Indian Act became increasingly more coercive.<sup>27</sup> The Indian Act became “an evolving, paradoxical document” enabling countless traumas, human rights violations, and social and cultural erasure for generations.<sup>28</sup> In fact, the Indian Act purposely caused major disruption to indigenous peoples, progressively destroying their identity and ability to function as independent citizens.<sup>29</sup>

Moreover, the provisions of the Indian Act were augmented by the nego-

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21 Titley, “Indian Act.”

22 William B. Henderson, “Indian Act,” In *The Canadian Encyclopedia. Historica Canada*, (article published February 8, 2006).

23 “A History of Treaty-Making in Canada.”

24 Titley, “Indian Act.”

25 Henderson, “The Indian Act.”

26 Titley, “Indian Act.”

27 Ibid.

28 Henderson, “The Indian Act.”

29 In actuality, many indigenous people did not want to become part of Canada, but this desire is inherently ignored by the creation of the Canadian state and the conditions previously created by the British. Under later amendments to the Indian Act it even became possible to force enfranchisement of Indians against their will, further bringing them into Canadian society and politics.

tiation of the Numbered Treaties throughout Canada. The acquisition of Rupert's Land created comprehensive sovereignty questions. The traditional lands of many Métis and aboriginal groups were sold to the Canadian government without their consent or consultation.<sup>30</sup> Consequently, the Canadian government endeavoured to solidify sovereignty through a series of expansive treaties to further settlement projects in a peaceful environment.<sup>31</sup> The ensuing treaties were much more complex than the earlier treaties of colonial Britain. These treaties offered onetime lump sum payments, annuities, specified reserve lands, hunting and fishing rights on unoccupied Crown lands, schooling, agricultural aid, ammunition, as well as tokens and clothing.<sup>32</sup> Due to epidemics, famines, the extinction of the buffalo, and accelerating change in the Prairies, many bands sought out the support of the Canadian state through these treaties. In result, between 1871 and 1921, eleven treaties were signed; the Numbered Treaties were divided into two groups: "those for settlement in the South and those for access to natural resources in the North."<sup>33</sup> Henceforth, the lands surrendered under the Numbered Treaties became key to the foundation of modern Canada, but also the marginalization and policing of indigenous groups.

However, it is important to realise that although Canada was its own nation at the time of the Numbered Treaties, the government still deferred to Britain and was thus, affected by British imperialism even after Confederation. In fact, the Numbered Treaties were made between "Her Most Gracious Majesty the Queen of Great Britain and Ireland, by Her Commissioners" and the representatives of aboriginal nations.<sup>34</sup> The language of these treaties is shrouded in typical imperial rhetoric, illuminating the continued influence of the British imperial project on the Canadian state and its policy towards indigenous rights. Allegiance is to be paid to the Queen rather than the Canadian government. To take the example of Treaty No. 7:

"the said Indians have been informed by Her Majesty's Commissioners that it is the desire of Her Majesty to open up for settlement, and such other purposes as to Her Majesty may seem meet, a tract of country, bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract, and to make a Treaty, and arrange with them, so that there may be peace and good will between them and Her Majesty, and between them and Her

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30 "A History of Treaty-Making in Canada."

31 Ibid.

32 Ibid.

33 Ibid.

34 "Treaty Texts," Treaty No. 7.

Majesty's other subjects; and that Her Indian people may know and feel assured of what allowance they are to count upon and receive from Her Majesty's bounty and benevolence ... the Blackfeet, Blood, Piegan, Sarcee, Stony and other Indians inhabiting the district hereinafter more fully described and defined, do hereby cede, release, surrender, and yield up to the Government of Canada for Her Majesty the Queen and her successors for ever, all their rights, titles, and privileges whatsoever to the lands included within the following limits."<sup>35</sup>

It is clear from these extracts that these treaties should be seen as an extension of the British Empire.

In addition to these clear colonial and later imperial interventions in the lives of indigenous communities, missionaries were also present across Canada before its formation and continued to be actors in indigenous relations long after.<sup>36</sup> Mission projects hold an ambiguous place in history; were they an independent humanitarian project or the educational arm of Empire? Regardless of intent, missions allowed for the propagation of imperial ideology and provided a framework for the Canadian state's assimilative policies, particularly through residential schools. Missionaries created boarding schools across Canada to offer education to indigenous and Métis children; for the most part, their parents supported the initiative of school building.<sup>37</sup> Many indigenous communities desired education, however, they wanted the opportunity and choice to control it.<sup>38</sup> Education through missions had been a practice long before the Canadian state. An early nineteenth century mission book reads, "It has long been a subject of great anxiety to afford religious instruction, and to better the condition of the inhabitants, and native tribes of Indians, in Hudson's Bay."<sup>39</sup> The ledger further demonstrates the far-reaching bounds of this educational initiative, "extending from Canada to the Pacific Ocean, and as far to the North as has hitherto been explored."<sup>40</sup> However, this vast network of Christian schools progressively became under the control of the government in the 1880s.<sup>41</sup> Consequently, the schools became increasingly isolated from indigenous

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35 Ibid.

36 Amanda Nettleback et al., *Fragile Settlements: Aboriginal Peoples, Law, and Resistance in South-West Australia and Prairie Canada* (Vancouver: UBC Press, 2016), 152-153.

37 Elizabeth Elbourne, "Missions and Education," (lecture at McGill University, Montreal, QC, November 2, 2016).

38 Ibid.

39 *Mission Book, North-West Canada, 1822-1834* (Available through: Adam Matthew, Marlborough, Empire Online).

40 Ibid.

41 Nettleback et al., *Fragile Settlements*, 152-153.

communities and incredibly coercive.<sup>42</sup> The residential schools came to function to remove children from their language and culture, to sever families and tradition, but also to provide a source of forced labour.<sup>43</sup> Children were sometimes removed by force from their families and involuntarily made to learn English or French, to forget their customs and history.<sup>44</sup> Following the 1894 amendment to the Indian Act, attendance became mandatory.<sup>45</sup> The clear subjugation of indigenous communities to settler colonial authority through their children rose after the foundation of the Canadian federal government, but was based on laws and practices enacted before Confederation. Residential schools, although at their worst controlled (and neglected) by the Canadian government, had their roots in British humanitarian or imperial missionaries. The schools' evangelising tendencies stem from the prior example of British intervention worldwide. The basis of this policy and practice predates the creation of Canada and undoubtedly is a continuation the British imperial project, infused into and unable to be separated from the Canadian state.

The legacy of British imperialism continued well into the twentieth century in Canadian indigenous affairs. Only recently has Canada started to make amends for its treatment and its consequential rewriting of indigenous culture and identity. But, reparations are complex and problematic, particularly due to the long history of misrecognition and harm. The Department of Indians Affairs and Northern Development until the mid-twentieth century focused on assimilating, controlling, and eradicating dissenting indigenous people, as to not impede the development of white Canada.<sup>46</sup> Under the federal government, once tenuous sovereignty claims became treaties eliminating First Nations' rights to the lands on which they lived, estranging communities to reserves, and often forcibly assimilating indigenous youth into Euro-Canadian society through residential schools.<sup>47</sup> The Canadian government came to formally dictate every aspect of indigenous identity, attempting to replace it with its own imagination of society. While the fault should never be distanced from the Canadian state for its damaging massacre of indigenous lives and culture, Canada's conception and interactions with First Nations were founded on

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42 Ibid., 165-174.

43 J.R., Miller, "Residential Schools," In *The Oxford Companion to Canadian History* (Oxford: Oxford University Press, 2004).

44 Elbourne, "Missions and Education."

45 Titley, "Indian Act." A 1930 amendment made it legal to hold children in residential schools until they turned 18.

46 Gurston Dacks, "Indian Affairs and Northern Development, Department of," In *The Oxford Companion to Canadian History* (Oxford: Oxford University Press, 2004).

47 Ibid.

long-established practices of maltreatment and erasure of indigenous sovereignty. Government practice in Canada was indelibly formed in the face of a British imperial past and could not be created independently of British coercive settler colonialism. Settler colonialism is argued to be inherently genocidal, a characteristic which is appallingly apparent in Canada's treatment of indigenous people.<sup>48</sup> These features of Canadian policy show a clear continuation of British control and beliefs in the legal status of indigenous people in Canada. Moreover, the British imperial project was irrevocably cemented in the foundation of the Canadian state. The continued existence and legal battles of indigenous peoples demonstrates the strength of their resistance and resiliency, and furthermore, is proof the British imperial project is still ongoing in contemporary Canada. The circumstances of Canada's past left a complicated legacy of overlapping, and often ignored sovereignty, legal pluralisms, and a necessary fight for indigenous nationhood, which will forever define Canada.

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48 Amanda Nettleback et al., 152.

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