

mindful

Journal of Ethics, Society, and Law

Trinity College, University of Toronto

Interview: Dr. Lisa Richardson
Madeleine Chin-Yee & Peter Gatti

**Invisible Women, Inconsistent Consultation,
Inspid Action**
Sasha Boutilier

***Creating Choices: Meaningful Reform or
Co-opting Dissent?***
Victoria Wicks

**The “Balanced” Family: Sex Selection and
Heteronormativity**
Natasha Procenko

**Establishing Integrity in Municipal
Government**
Megan Brooks



Issue 7, Autumn 2015

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JOURNAL OF ETHICS, SOCIETY AND LAW
TRINITY COLLEGE, UNIVERSITY OF TORONTO

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EDITORS' INTRODUCTION

Dear Reader,

We are thrilled to present to you the seventh edition of *Mindful*, the University of Toronto's multidisciplinary journal for ethics, affiliated with the Ethics, Society and Law program at Trinity College. Although we did not set out with a specific theme for this edition, we are pleased that it evolved to have a significant Indigenous dimension, exploring in particular important contemporary issues at the intersection of race and gender.

Our issue opens with an interview with Dr. Lisa Richardson, a clinician-educator of both Anishinaabe and European ancestry. In many ways, Dr. Richardson embodies the interdisciplinary nature of the Ethics, Society, and Law program, and *Mindful*. She shares her thoughts on the artificial dichotomy between art and science—two disciplines she works to integrate in her career—and offers insights into an Indigenous perspective, which tends not to see this distinction. We progress from a discussion of Western versus Indigenous ways of knowing, to questions about racism in the Canadian healthcare system, the emergence of the term cultural genocide in public discourse, and missing and murdered Indigenous women, among other relevant Aboriginal issues gaining momentum in the public sphere.

The first featured undergraduate paper by Sasha Boutilier picks up on themes from the interview, examining in detail the failures of the federal government's *Action Plan* to address the issue of missing and murdered Aboriginal women. Boutilier's essay was recently named the Rabbi Isserman best U of T undergraduate or graduate essay about international or interracial relations.

On the 25th anniversary of its inception, Victoria Wicks expounds upon the underlying contradictions of Correctional Services Canada's report regarding prison reform for federally sentenced women, seen in 1990 as a progressive report with surprisingly feminist recommendations. Wicks' contemporary reading is exceedingly relevant today, as she takes into account the disproportionate incarceration rates of Aboriginal and black women, which have been rising in recent years.

The third undergraduate paper featured in this edition is a concise philosophical exposé on the ethical indefensibility of sex-selection for purposes of family balancing. Natasha Procenko utilizes feminist and queer theoretical frameworks to argue that pre-conceptual sex selection to produce a family with both male and female children is fixed in harmful heteronormative assumptions.

We switch gears with the final undergraduate paper, in which Megan Brooks explores the importance of ethics in government, arguing for the compulsory establishment of integrity commissioners in all of Ontario's major cities to ensure the accountability and transparency of their governing bodies. Using local case studies from Toronto and London, she demonstrates how municipalities desperately need to revise their culture of ethics.

We would like to express our deepest gratitude to all those who contributed so generously to this edition of *Mindful*. We would like to sincerely thank Dr. Richardson for taking the time to speak with us and share her wisdom. We are also very grateful for the undergraduate students whose essays are featured in this edition, the nine members of *Mindful*'s editorial board, and our cover artist Russell Hoy.

Finally, we would like to extend a special thank you to our faculty advisor Professor John Duncan, whose constant support and mentorship has made it possible to launch this seventh edition of *Mindful*.

Sincerely,

Madeleine Chin-Yee and Polly Karpazis

Editors-in-Chief, *Mindful*

AN INTERVIEW WITH DR. LISA RICHARDSON

Lisa Richardson is an award-winning clinician-educator in the University of Toronto's Division of General Internal Medicine. Her academic interest lies in the integration of critical perspectives from the social sciences and humanities into medical education. She currently practices General Internal Medicine at the Toronto Western Hospital where she is Site Director for the Core Internal Medicine Residency Program. She is Faculty co-Lead in Indigenous Medical Education for the University of Toronto's medical school and is an Assistant Professor in the Department of Medicine. She is also a 2014-2015 AMS Phoenix Fellow; her fellowship project is the integration of cultural safety teaching into the medical school curriculum.

In the summer of 2015, *Mindful's* Madeleine Chin-Yee and Peter Gatti interviewed Dr. Lisa Richardson in the Office of Indigenous Medical Education.

Madeleine Chin-Yee: Would you mind telling us a little bit about yourself, your background and your work?

Dr. Lisa Richardson: In terms of my personal background, I was born in Northern Ontario in Kirkland lake. My father is from a long line of physicians, of European descent, and worked in Northern Ontario. My mother is of Anishinaabe ancestry, from an area called Killarney, for which the Ojibwe name is Shebahonaning. She came from a family that had very little, and so I embody two very different backgrounds.

In terms of my academic background, I studied at McGill and couldn't decide what I wanted to do: an arts-based degree or a science-based degree. I ended up doing both English Literature and Biology as a double major, and I realize now that this multidisciplinary approach made sense; if you're thinking about things in an Indigenous way, the separation between art and science is not as concrete as it is in a Western philosophical perspective. To have to choose one or the other is a little bit artificial. So I did both, and studied the representation of women's bodies in medicine which led me to critical feminist theory. I then realized that I wanted to do something more concrete to enact change in our world, and I thought that medicine would be a path for me to do that.

MCY: At the Public Health History conference this past March, you talked about what you called "blood memory"—how Indigenous peoples are often viscerally connected to the experiences of their relatives and ancestors. Could you speak a bit about this concept?

LR: Blood memory is the idea that people who have not grown up with their culture have a sense that there is or there are memories and experiences that are passed along. Many people were taken away from their families and taken away from their culture. Hearing stories from their elders, they may not actually *know* something the way in which we think about it being known in a sort of 'cognitive science' or 'Western' approach—but there is an intuitive knowledge that appears to be passed along. That's what I would call blood memory. I think it's really important to acknowledge and to recognize that it's a form of knowing that is really important and exists beyond the kinds of Western ways of knowing.

Peter Gatti: Could you speak to the philosophical differences, broadly, between Western and Indigenous medicine? What kinds of ‘knowing’ perhaps do not appear in Western medicine?

LR: That’s a very important question that we encounter a lot in the medical school. Typically, what’s valid in the medical sciences is a positivist approach where information is measured, data-driven and numerical. It is observed by a detached, supposedly unbiased observer, where there are clear distinctions and a clear mind-body dualism. Conversely, in an indigenous approach, there is a focus on holism, so rather than a dualistic approach, there is the mind-spirit-body approach which sees these elements as interconnected or related, and critical to the components of health. There is also an emphasis on stories and experiential knowledge, on ‘narrative,’ to use a Western term. Story and experience are just as valuable as what can be observed and counted, and they are a really important way of passing knowledge along.

Interestingly, in non-indigenous contexts, it is thought that stories are for children. But in an indigenous context (as in many other cultures), stories are a form of knowledge translation and of passing along information to people of all ages. You might hear a story from an elder as a child, as a teenager, and as an adult. Each time, you may glean different things from that story, different teachings. Also, most indigenous traditions are oral and visual-oral, and therefore story is a predominant methodology for sharing knowledge.

PG: What can that mean concretely for treatment?

LR: It’s funny, because we talk about “indigenizing” the curriculum for all medical students; I think what this means is recognizing the primacy of the stories and experiences of our patients. I try to listen intently and with an open heart to the experiences of all of my patients. If we recognize that their stories are really important, and that they need to be honoured and they need to be treated with respect, we’ll listen more deeply, and we will really hear what our patients are telling us. In a concrete way, an Indigenous approach can translate to honouring individual peoples’ stories and backgrounds and histories and listening to them. It also translates into recognizing that when a patient comes to see you, we cannot treat the physical complaint in isolation from the whole person or from the community. We can’t just put a band-aid on a cut. We have to recognize and support other aspects of health—the mind, body, spirit, emotion—in order for people to be truly well.

MCY: You’ve been very vocal about the issue of J.J., the eleven year old Haudenosaunee girl with Leukaemia, whose family opted to see a traditional Haudenosaunee healer instead of continuing with chemotherapy, which was eventually taken to court. Could you tell us about your view on this issue and how it played out?

[Editors’ note: JJ was diagnosed with leukemia and her family opted to stop chemotherapy in order to pursue traditional Aboriginal healing practices supported by supplements from a non-Aboriginal nutritionist. Her family argued that they should be entitled to pursue this pathway based on their Aboriginal rights as protected in the Canadian Constitution; a ruling by the Ontario Court of Appeal supported this decision.]

LR: I think it’s a classic example of a culture clash in which two disparate groups are not coming together to listen to one another. It is primarily the medical community who are not listening because Aboriginal communities have been forced to listen and forced to follow rules and

structures that they don't necessarily agree with since contact and colonization. The result of the conflict around J.J. seems so simple: Why did J.J. and her family feel that they didn't want to turn to or be a part of the Western medical system? It may be because the Western medical system has not been safe for indigenous people in the past, and continues to be unsafe. It seems so elemental because we have ample evidence to support the ongoing mistreatment of First Nations, Inuit and Métis peoples in our health care system.

One of my colleagues who is here at the University of Toronto, Janet Smylie, recently co-authored an amazing report called "First Peoples, Second Class Treatment" about the ongoing racism in health care, and about colonial practices and racism as a social determinant of health for Canada's Indigenous peoples. I also speak to members of the community and hear their anecdotes about their experiences in the health system; it just goes on and on – the stories of mistreatment – and yet nobody wanted to address this in the case with J.J.. When I brought it up, the Canadian Paediatric Association was very upset. They wondered how I could be advocating for the mistreatment of a young girl. In no way am I advocating for J.J. not to receive treatment. I am advocating for the institutions of medical science to look at their practices and to bring about change that will make *our* hospitals, *our* institutions, and *our* clinics welcoming places for all people.

For Indigenous peoples, that will involve doing more than bending over backwards, so to speak, because of the extent of the historical mistreatment. I was quite amazed at the response from many of my colleagues to JJ's case. To me, it just seems very clear that we should not focus on the specific physicians or the family; it is a systemic issue that needs to be addressed. We, as healthcare providers and as physicians as a group, are not very good at the idea of collective practice. We have not learned to look at our own implicit biases, our behaviours and our thoughts, and to understand how they percolate through to our relationships and interactions with patients. And this idea seemed very inflammatory, surprisingly so to me, because it felt as though it was just very elemental.

MCY: In the study you just mentioned, written by your colleague Janet Smylie, I understand 'cultural safety' training was suggested to remedy what the authors called an 'unconscious pro-white bias' in medical practice. What does cultural safety mean to you and is this an effective solution in your opinion?

LR: I think it is critically important. Cultural safety was a concept that was first described by a Maori nurse researcher. It is different from 'cultural sensitivity,' if you look at the history of training around healthcare interactions. Cultural sensitivity is to be aware that there are people from other cultures, people from other backgrounds that are different from yours, who may not respond to you in the same way. 'Cultural safety' is much deeper. It is when healthcare providers treat patients in a way in which they feel listened to, recognized, and most importantly, in which the healthcare practitioner recognizes the implicit power dynamic in the relationship. One of the key ideas around cultural safety is that the physicians or the healthcare providers are not the ones who determine what cultural safety is, it is the person who is receiving the healthcare. It's implicitly a 'patient-centered' approach that is actually a real reversal of the usual pattern of how we deliver healthcare. Of course, health care providers must also recognize the diversity within the Indigenous community: First Nations, Inuit, Métis, Urban, Reserve, as well as individual choices and personalities. Some people use traditional medicine (meaning healers), some people follow a Judeo-Christian tradition, some will seek help exclusively from physicians

and nurses. But, while recognizing that diversity, what we talk about with cultural safety for indigenous patients is that in order to understand an individual patient that comes in to see you, every healthcare provider also needs to know about the colonial experiences and the historical trauma that has affected Indigenous people in our country.

MCY: Recently, Trinity College received Queen Elizabeth II Scholarship funds for commonwealth country internships, some of which are dedicated to understanding and developing right relations with indigenous peoples. This summer, one Trinity student is in Australia, another in New Zealand working with a Maori researcher, and both will return to enroll in Ethics, Society & Law's Community Research Partnership in Ethics course in September to further develop research partnerships with local indigenous community organizations in 2015-16. Given the diversity of indigenous communities you mention in Canada alone, how do you see opportunities to learn from indigenous experiences internationally? Are there further possibilities like the application of the Maori concept of “cultural safety” to deal with the colonial legacy in Canadian health care facilities?

LR: Although there is significant diversity in Indigenous communities both within Canada and around the world, there are also major commonalities. The commonalities are related to the experiences of colonization, and the fact that one of the most important social determinants of health for Indigenous people worldwide is colonization and the resultant inequities from colonial practices. The partnerships that you describe present an opportunity for Indigenous peoples to learn from one another. For example, one of the most important writers about Indigenous research methodologies is Dr. Linda Tuhiwai Smith, a Maori education researcher. Her ideas definitely translate to a Canadian context. Similarly, cultural safety – a concept which was theorized in a scholarly way by another Maori researcher, Irihapeti Ramsden – has already been adopted in numerous Canadian health care and educational institutions. I think that the creation of both formal and informal networks of Indigenous researchers, activists and community members around the world will strengthen work in Indigenous health. Not only does it create space to share ideas, it also draws attention to areas where Canada is leading and areas in which Canadian policies are less progressive. The United Nations’ Declaration on the Rights of Indigenous Peoples is another important document which brings a strong and unified voice to First Peoples across the globe.

MCY: One of the articles in this issue of *Mindful* is about missing and murdered Indigenous women, and the failure of the Conservative government’s *Action Plan* to address this issue. What do you have to say about the unique struggle of Indigenous women in Canada?

LR: The issue of the lack of action around missing and murdered indigenous women is appalling. I think it is shocking that we do not have a larger public mobilization around this issue. As Tanya Tagaq says, “my daughter is ten times more likely to be murdered than your daughter” (she says this to Stephen Harper—so, comparing a white man with an Indigenous woman). It links very much to JJ’s story. It is about addressing the racism within our institutions. Just as we must address the racism within health care, we must do the same thing within our judicial institutions. It is also analogous to health inequities, where there are major social determinants of justice for Aboriginal women. If we used a model of intersectionality to analyze the problem, Indigenous women are much more likely to be living in poverty, more likely to have a lower level of education and socioeconomic status, and more likely to experience violence than non-Aboriginal women. This leads to marginalized living conditions and may lead

to working in the sex trade or in other destructive environments. We cannot only focus on the lack of action within the judicial institutions; we need to zoom out and say, “Ok, what are the social determinants of health here that we’re not addressing?”

PG: Stephen Harper apologized for Canada’s treatment of First Nations people in 2008, and he focused specifically on residential schools. Since then, Harper has had a strained relationship with First Nations leaders; failing to dedicate resources to probing missing and murdered Aboriginal women and cutting one billion dollars from Aboriginal Affairs. Do you think that it’s sometimes easier for Canadian society to apologize for past injustices than it is to remedy current situations?

LR: I think it’s always easier to apologize for something that you feel you didn’t actually commit yourself. One of the common responses to the struggles of Indigenous peoples is “get over it, it happened so long ago.” Making people understand that these struggles are ongoing, and that colonial practices and their effects are ongoing, is difficult. To build on these other examples that we’ve talked about, kids on-reserve continue to receive so much less funding for their education than children who are off-reserve (non-Indigenous) children. It is a disparity and inequity. These ongoing marginalizing practices have a major ripple effect because they contribute to the rates of post-secondary education, which are much lower than for non-Indigenous people in Canada. I think it’s been easy to say, “yes, we’ve apologized, let’s move on,” but it’s much harder to say, “I recognize that there are ongoing inequities that our government has not addressed and I am going to address them.”

MCY: Chief Justice Beverly McLachlin and Justice Murray Sinclair recently used the term “cultural genocide” to describe Canada’s actions against Aboriginal peoples. Even if it does not have any legal consequences, what do you think about the symbolic importance of changing our vocabulary to use the term “cultural genocide”?

LR: I have chills just thinking about it. For the National Indigenous Health conference that we organized last fall, we hosted a panel with Bernie Farber, Michael Dan, and Phil Fontaine. Michael Dan argued in a very specific, legalistic way that what happened to Aboriginal people in residential schools meets the definition of cultural genocide. It lends a gravity to it that will bring international attention and I think will cause all Canadians to realize that these were systematic atrocities that occurred. Until we acknowledge that, until there is truth, we cannot have reconciliation. Everybody has contributed in some way; whether as a settler from way back, a new settler walking into a government that is continuing to support practices that are perpetuating inequities, or, on the other side, as an Indigenous person. Everybody has to come together to reconcile.

MCY: We wanted to ask you about another issue that relates to one of the articles in this edition. The article is about Canadian women’s prisons, and the author talks about the incompatibility between certain Aboriginal and Western institutions. In particular, how it is difficult to integrate elements such as non-hierarchical “Healing lodges” into the Canadian prison setting, which is inherently about punishment, not healing. As someone who works to integrate traditional practices into Western society, how do you think we can overcome this challenge?

LR: There is some really amazing writing by post-colonial theorists such as Homi Bhabha – for example, the idea that when two worldviews come together, what emerges is a ‘third space’. So

it will not be just the equivalent of A + B creating AB, but a new hybrid model will emerge which accommodates the co-mingling of two worldviews. There needs to be an understanding and a tolerance for the idea that what will emerge will be something a little bit different than what both sides are imagining. There also needs to be a willingness on the part of the dominant group to create space for other worldviews and there needs to be a recognition of how the dominant ways of knowing have penetrated very deeply; a willingness to create space, and an openheartedness to say “come in, advise us and we will listen. We will listen and we will make the changes that you recommend.”

I think that it can happen if there is an open-mindedness and openheartedness on both sides. In particular, the dominant group needs to understand that it cannot determine *the* right way, or control how practices are integrated.

MCY: What do you think is the biggest barrier to Aboriginal equity in Canada and what do you believe is the most important step in overcoming this barrier?

LR: There is no question for me that the most important step is self-determination. We see this in health with the British Columbia First Nations Health Authority. There is preliminary research from them about the positive impact of self-determination on health. Dr. Evan Adams, head of this First Nations Health Authority, has presented data which shows that infant mortality has already gone down. This finding is a very powerful example of how when Aboriginal peoples make a decision for their own communities, really good things can happen. I believe that when the opportunities for self-determination exist, people will aspire to be working in these Aboriginal institutions and organizations, and they will welcome Aboriginal students so that it will permeate through all levels.

MCY: Who is your favourite writer and why?

LR: I love the work of Thomas King. Thomas King represents the best of Indigenous literature because he is able to bring forward strong messages through story, the importance of which I've already mentioned, and through humour. He creates these incredible characters who we can all relate to even though they may be “Coyote” or a talking animal. In a Western literary tradition, they go “oh, that’s a children’s story” but these are very much adult stories. The way Thomas King plays with myth and reality in a very everyday way is magical.

MCY: If you could give any piece of advice to undergraduate students, what would it be?

LR: That’s a good one. I think it’s good to recognize that thinking outside the box is really important, and not to feel like you’re an outsider because you’re doing that. Even if you’re working in a fairly rigid environment or institution and someone tells you that you need to do things in a particular way, you should still imagine possibilities which resonate with you and speak up about them; not only can it enhance your own work, but others will learn from you.

INVISIBLE WOMEN, INCONSISTENT CONSULTATION, INSIPID ACTION

Consultation failures of the Conservative Party of Canada on the issue of violence against Aboriginal women and these failures' policy implications

Sasha Boutilier

ABSTRACT. The Canadian federal government has failed to take adequate action to address the tragically high rates of violence against Aboriginal girls and women despite consistent pressure from international human rights organizations, Aboriginal organizations, family members of victims, and opposition parties. Two key issues of contention with the Conservative Party of Canada's *Action Plan* are its failure to call for a national inquiry and its exclusive focus on Aboriginal men. Through analysis of testimony to the *Special Committee on Violence Against Indigenous Women* (SCVAIW), I demonstrate that these policies were pursued in spite of expert witness and family testimony calling for an inquiry and action to address racially motivated violence, through distortion and selective inclusion of Aboriginal voices. Examining consultation of Pauktuutit Inuit Women of Canada on the issue of violence against Aboriginal women, I illustrate that inadequate engagement with Aboriginal leadership exacerbated dissatisfaction with consultation processes rather than contributing to a process of reconciliation. Rooting my analysis in these consultation failures, I further illustrate the inadequacies of the proposed *Action Plan* with reference to academic literature, previous government inquiries, and international human rights reports.

On September 16, 2014, Minister of Labour and Status of Women Kellie Leitch tabled Status of Women Canada's (SWC) *Action Plan To Address Family Violence and Violent Crimes Against Aboriginal Women and Girls*.¹ The *Action Plan* was the Conservative government's response to the disturbing reality that Aboriginal women are more than three times as likely to be a victim of violence and four times as likely to be murdered than non-Aboriginal women.² The SWC *Action Plan* responded to the recommendations of the Special Committee on Violence Against Indigenous Women (SCVAIW), which was created by a motion introduced by Liberal Aboriginal Affairs Critic Carolyn Bennett that passed unanimously in the House of Commons on February 26, 2013.³ Although hopes were initially high for this committee among Aboriginal leadership and opposition parties, its conduct and final report, *Invisible Women*, proved disappointing. Thus, it is not surprising that the SWC *Action Plan* has also been met with significant criticism. In this paper, I shall examine consultation failures of the SCVAIW and on

¹ Status of Women Canada. "Action Plan to Address Family Violence and Violent Crimes Against Aboriginal Women and Girls." *Government of Canada*, September 15, 2014. <http://www.swc-cfc.gc.ca/violence/efforts/action-eng.pdf>

² Royal Canadian Mounted Police. "Missing and Murdered Aboriginal Women: A National Operation Overview." (2014): 8-9. <http://www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.pdf>

³ Carolyn Bennett. "Opposition Motion – Missing Aboriginal Women." *Parliament of Canada*, February 26, 2013. <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=1&DocId=5990386#SOBQ-7891541>

the *SWC Action Plan*. Subsequently, I will investigate how the misrepresentation of testimony and silencing of Aboriginal voices by the Conservative Party of Canada (CPC) led to the *Action Plan's* failure to call for a national inquiry and decision to focus on family violence rather than violence against Aboriginal women by non-Aboriginals.

Provinces, territories, and First Nations representative organizations⁴ have expressed serious concerns about not being consulted on the *SWC Action Plan*. This is significant as they have also been very disappointed by the specific proposals of the *Action Plan*. To first address provinces and territories, Liberal Aboriginal Affairs Critic Carolyn Bennett recently condemned the *Action Plan* for simultaneously proclaiming a need to work with all levels of government and failing to specifically consult provinces and territories on the plan.⁵ MP Niki Ashton, the New Democratic Party (NDP) Aboriginal Affairs Critic, introduced a Private Member's motion in October 2013 that similarly called for a "coordinated National Action Plan" developed "in collaboration with provinces, territories, civil society and First Nations, Metis and Inuit peoples and their representatives."⁶ This motion constituted a clear dismissal of the SCVAIW, which had already begun meeting in June, for not adequately engaging relevant parties⁷ in the process. However, Min. Leitch argued that specific consultation with the provinces was unnecessary as they "had been engaged" in the recent past and their support for an inquiry was "quite well-known."⁸ Min. Leitch's comments underline that the Conservative government has taken a consistently minimalistic, nebulous definition of consultation. For instance, Min. Leitch's spokesperson defined consultation as "any form of dialogue that can contribute to the development of good public policy."⁹

Furthermore, consultation with Aboriginal leadership has been lacklustre in formulating the *Invisible Women* report. Both the Liberal and NDP's dissenting reports criticized a lack of genuine engagement with National Aboriginal Organizations (particularly the Native Women's Association of Canada), Aboriginal community organizations, and families of victims.¹⁰ MP Ashton expressed disappointment that her hope that "First Nations, Inuit, and Metis and organizations and families would help lead, direct and inform the work of the committee," was not met.¹¹ MP Bennett wrote that "from the very first meeting it was clear [the Committee] would not be allowed the flexibility necessary in the design of its study, the way it heard from

⁴ Aboriginal organizations serving a representative purpose in Canada that are addressed in this paper include the Assembly of First Nations (AFN), Native Women's Association of Canada (NWAC), and Pauktuutit Inuit Women of Canada.

⁵ Kathryn Blaze Carlson. "Aboriginal groups listed on Tory action plan say they were not consulted." *The Globe and Mail*, February 16, 2015. Online. <http://www.theglobeandmail.com/news/politics/aboriginal-groups-listed-on-tory-action-plan-say-they-were-not-consulted/article23010819/>

⁶ Niki Ashton. "Private Member's Motion M-444 – National Action Plan to Address Violence Against Women." *Parliament of Canada*, October 16, 2013.

<http://www.parl.gc.ca/content/hoc/Committee/412/IWFA/Reports/RP6469851/IWFArp01/IWFArp01-e.pdf>

⁷ Parties the government faced criticism from for inadequately engaging include: provinces and territories; Aboriginal representative organizations; and family members of victims.

⁸ Carlson.

⁹ Carlson.

¹⁰ Special Committee on Violence Against Indigenous Women. "Invisible Women: A Call to Action, A Report on Missing and Murdered Indigenous Women in Canada." *Parliament of Canada*, (March 2014): 75-80.

<http://www.parl.gc.ca/content/hoc/Committee/412/IWFA/Reports/RP6469851/IWFArp01/IWFArp01-e.pdf>

¹¹ Special Committee on Violence Against Indigenous Women, 75-76.

witnesses, to achieve meaningful results.”¹² Specifically, Bennett criticized the failure to engage Aboriginal organizations and family members from the outset, particularly the failure to engage NWAC in the design of the study and the decision not to hear testimony from family members and victims of violence until the eighth committee meeting.¹³

The Native Women’s Association of Canada echoed these concerns. In a March 2014 press release, the NWAC stated that it “offered its expertise” early on and sought “ex-officio, non-voting membership status” as had been the case with the Penner Commission on Aboriginal self-government.¹⁴ This request would have allowed the NWAC to “participate fully in the parliamentary committee, and provided them with the ability to participate in the committee work plan, witness list, questioning of witnesses, travel with the committee members, and develop the final report.”¹⁵ However, this request was rejected and the NWAC was not consulted until the sixth committee meeting.¹⁶ In place of ex-officio membership, the NWAC was granted “expert advisor” and “expert witness” status but was not permitted to give input into the committee’s functioning.¹⁷ This effectively placed the NWAC in the position of “rubber stamp[ing]” the report without “having been fully engaged.”¹⁸

Overt partisanship, failure to substantively engage Aboriginal organizations, and misrepresentation of witness testimony contribute to the *Invisible Women* report’s failure both to recommend a national inquiry and to offer real measures to combat racism. Having discussed broad issues in the organization of consultation, I shall next examine how the consultation processes failed to adequately hear and reflect Aboriginal organizations’ concerns regarding a national inquiry and the *Action Plan*’s exclusive focus on Aboriginal family violence rather than racism and violence by non-Aboriginal men. To this end, I have examined the testimony of all individual and expert witnesses to the SCVAIW, revealing inconsistencies in the *Invisible Women* report regarding a national inquiry and lack of action to address the individual and structural racism mentioned by many family members of victims.¹⁹

The CPC, with often dubious justification, has consistently aligned itself against an inquiry. The SWC *Action Plan* makes no mention of a national inquiry into Missing and Murdered Aboriginal Women. Prime Minister Harper has consistently opposed an inquiry despite calls for such from all the provinces, First Nations leadership, families of victims, Amnesty International, UN Special Rapporteur on the Rights of Aboriginal Peoples James Anaya²⁰ and the Organization of American States’ Inter-American Commission on Human

¹² Ibid, 79.

¹³ Ibid, 80.

¹⁴ Native Women’s Association of Canada. “Press Release – NWAC Disappointed Once Again.” (March 7, 2014): 2 http://www.nwac.ca/files/2014_03_07%20NWAC%20Disappointed%20Once%20again_0.pdf

¹⁵ Native Women’s Association of Canada, 2.

¹⁶ Native Women’s Association of Canada, 2; Special Committee on Violence Against Indigenous Women, 49.

¹⁷ Native Women’s Association of Canada, 2.

¹⁸ Native Women’s Association of Canada, 2.

¹⁹ See Appendices 2-4.

²⁰ James Anaya. “Report of the Special Rapporteur on the Rights of Indigenous peoples, James Anaya.” *United Nations Human Rights Council*, A/HRC/27/52/Add.2, (May 7, 2014): 11.

Rights.²¹ The federal government justified this lack of response in part by pointing to the lack of unanimity in the *Invisible Women* report concerning the necessity of such an inquiry. Prime Minister Harper, Minister of Aboriginal Affairs and Northern Development Bernard Valcourt, Min. Leitch, and their staffers have repeatedly justified not conducting an inquiry by asserting that victims' families agree "that now is the time for action, not more studies."²² The CPC's assertion that victims' families do not want further study of this issue is not supported by the testimony heard in the Special Committee on Aboriginal Peoples. In fact, the *Invisible Women* report's section on a national inquiry distorts Aboriginal voices, suggesting they oppose an inquiry, and understates the clear majority preference of witnesses for an inquiry, as I elaborate below.

After describing support from "several witnesses"²³ for a national inquiry and possible objectives of the inquiry, the *Invisible Women* report draws a dichotomy between action and inquiry stating "other witnesses, including Pauktuutit Inuit Women of Canada, believe that the needs of Aboriginal communities are too dire to spend money on establishing such a commission."²⁴ The report supports this assertion with a quote from Marie Sutherland.²⁵ Though Sutherland does work with the Native Women's Transition Centre, she is neither a family member of a missing or murdered Aboriginal woman nor a representative of Pauktuutit. Thus, the claim that family members oppose an inquiry is not supported by SCVAIW testimony.²⁶

Further, Pauktuutit is not nearly as opposed to a national inquiry as the *Invisible Women* report suggests. In fact, the report misrepresents and distorts the balanced position taken by Pauktuutit on a national inquiry. Pauktuutit representatives acknowledge that the "board initially thought that any resources required or devoted to such an undertaking could really be better spent on an emergency basis in Inuit communities."²⁷ It would seem fairly natural that a chronically underfunded group would prefer funds devoted to a national effort to instead be focused exclusively on their needs. However, Pauktuutit seems to recognize that this is unlikely given violence against Aboriginal women is a national issue, and states that if the inquiry does go forward "it's critically important to them that Inuit be consulted separately and specifically."²⁸

Pauktuutit's position is thus clearly not nearly as strongly opposed to an inquiry as the language of the report suggests (i.e. "too dire to spend money on such a commission"). Further,

²¹ Inter-American Commission on Human Rights. "Missing and Murdered Indigenous Women in British Columbia, Canada." *Organization of American States*, (December 21, 2014): 116.

<http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>

²² Chinta Puxley. "Ottawa rapped for inaction on aboriginal women." *The Chronicle Herald*, February 26, 2015.

<http://thechronicleherald.ca/canada/1271558-ottawa-rapped-for-inaction-on-aboriginal-women>

²³ As seen in Appendix 1, the actual number of witnesses supporting an inquiry is 11. "Several" seems a convenient understatement of support for the inquiry, especially in context of the lack of opposition to an inquiry I shall examine next.

²⁴ Special Committee on Violence Against Indigenous Women, 14.

²⁵ See Appendix 4.

²⁶ See Appendix 2 for a summary of testimony from individual witnesses.

²⁷ IWFA. 1st session, 41st Parliament, "Evidence: June 13, 2013," Special Committee on Violence Against Indigenous Women. *House of Commons*, (June 13, 2013): 6.

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6233602&Language=E&Mode=1>

²⁸ IWFA, "Evidence: June 13, 2013," 6.

Pauktuutit Executive Director Tracy O’Hearn specifically contradicted the false dichotomy drawn in the report between action and inquiry. During the SCVAIW hearing, NDP MP Romeo Saganash explicitly asked O’Hearn whether action and inquiry were mutually exclusive. In response, Tracy O’Hearn explicitly stated action “wouldn’t stop such a process,” and that shelters are “not even a band-aid on the solution...they’re far from the response that’s required.”²⁹ This response clearly contradicts the report’s assertion that Pauktuutit believes the needs are too dire for a national inquiry and shows that Pauktuutit does not support the dichotomy put forth in the SCVAIW report. This further demonstrates incompetence in review of testimony, at best, and at worst, deliberate misrepresentation and appropriation of marginalized voices by the CPC.

An August 2014 press release from Pauktuutit expresses clear conditional support for an inquiry.³⁰ The press release reiterates Pauktuutit’s condition for support of the inquiry that Inuit communities “will have the necessary support for full and meaningful participation in such a process.”³¹ The Conservative government has continued to suggest it has the support of Pauktuutit in opposing an inquiry, most recently listing Pauktuutit as an Aboriginal organization consulted in response to an Order Paper question from Liberal MP Kirsty Duncan.³² However, Pauktuutit denies being consulted on this matter.³³

Far from supporting Min. Leitch’s *Action Plan*, Pauktuutit President Rebecca Kudloo has in fact openly criticized the *Action Plan*’s paltry allocation of funds to address violence against Inuit women and girls as “simply offensive and discriminatory.”³⁴ Of the \$7 million in the *Action Plan* allocated to family violence prevention activities, only \$75,000 (roughly 1%) will go to Inuit communities.³⁵ Kudloo expressed further concern that “much of the funding...is simply a renewal of existing funding and programs,” a sentiment echoed by Liberal Aboriginal Affairs Critic Carolyn Bennett who called the *Action Plan* a “laundry list of existing programs.”³⁶ NWAC President Michelle Audet expressed similar concerns about the *Invisible Women* report, stating that only five of the report’s 16 recommendations specifically reference Aboriginal women and girls.³⁷ These criticisms seem warranted because the *Action Plan* trumpets an

²⁹ Ibid.

³⁰ “Press Release – Pauktuutit Supports Call for National Roundtable on Violence Against Aboriginal Women.” *Pauktuutit Inuit Women of Canada*, August 28, 2014. <http://pauktuutit.ca/news/press-release-pauktuutit-supports-call-for-national-roundtable-on-violence-against-aboriginal-women/>

³¹ Pauktuutit Inuit Women of Canada, 2014.

³² Carlson.

³³ Carlson. Pauktuutit confirms that Min. Leitch and Rebecca Kudloo (President of Pauktuutit) spoke over the phone at the listed time. However, this call was not to assist Leitch with any consultation of Pauktuutit, but instead to assist with a visit to families in Iqaluit (Carlson). Under Min. Leitch’s definition, this visit to families would constitute consultation.

³⁴ Rosane Dore Lefebvre. “Oral Question, Aboriginal Affairs.” *Parliament of Canada*, December 10, 2014. <http://www.parl.gc.ca/HousePublications/Publication.aspx?Doc=159&Language=E&Mode=1&Parl=41&Pub=Hansard&Ses=2>

³⁵ Nunatsiaq News. “On funding, Ottawa discriminates against Inuit women: Pauktuutit.” *Nunatsiaq Online*, December 05, 2014.

http://www.nunatsiaqonline.ca/stories/article/65674federal_response_to_inuit_womens_needs_is_discriminatory_pauktuutit/

³⁶ Nunatsiaq; Carlson.

³⁷ Native Women’s Association of Canada, 3.

investment “of nearly \$200 million over five years,” but only \$25 million (one eighth) is in fact new funding.³⁸ By contrast, the federal government reports “at least \$122 million” in new spending³⁹ fighting the Islamic State during a sixth month period beginning in September of 2014.⁴⁰ Further, though the *Invisible Women* report cites Pauktuutit’s emphasis on the need for shelters in order to invalidate calls for a national inquiry, the *Action Plan* fails to take any additional action on funding shelters. Instead, it merely cites the existing programs Pauktuutit has criticized as insufficient.⁴¹ In circumventing Pauktuutit’s representative role for Inuit women, the federal government violated the spirit of consultation norms in international law.⁴² Further, by failing to adequately hear and incorporate Pauktuutit’s priorities (i.e. increased funding for shelters) during consultation, the federal government has inspired further discord and discontent rather than the reconciliation that proper consultation should bring.⁴³

As this analysis shows, no Aboriginal groups consulted by the SCVAIW hold the views the report states that “others” hold. I reviewed the testimony of all organizations and individuals to the SCVAIW to discover whether they mention an inquiry and whether they favour or oppose an inquiry.⁴⁴ Of the organizations consulted, the only one possibly in opposition to an inquiry was Pauktuutit, while ten other organizations favoured an inquiry.⁴⁵ The only individual who opposed an inquiry was Marie Sutherland, who was neither participating as a family member nor in her capacity as a staff member with the Native Women’s Transition Centre.⁴⁶ Further,

³⁸ Status of Women Canada. “Action Plan to Address Family Violence and Violent Crimes Against Aboriginal Women and Girls.” *Government of Canada*, (September 15, 2014): 1. <http://www.swc-cfc.gc.ca/violence/efforts/action-eng.pdf>

³⁹ The Parliamentary Budget Office puts this figure up to \$44 million higher, and suggests the cost could reach \$351 million if continued till September 2015 – a one-year period (Minsky). This is over fifty times the new funding dedicated to violence against Aboriginal women over the same period.

⁴⁰ Lee Berthiaume. “Canada’s war against ISIS has cost \$122 million, not including salaries and fixed costs, government says.” *National Post*, February 16, 2015. <http://news.nationalpost.com/news/canada/canadian-politics/canadas-war-against-isis-has-cost-122-million-not-including-salaries-and-other-fixed-costs-government-says>

⁴¹ Status of Women Canada, 1.

⁴² As Anaya details, International Labor Organization Convention 169, Article 6 states that governments have the duty to “consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly” (Anaya, “Indigenous Peoples in International Law” 154). That Indigenous representative institutions should be consulted in particular is confirmed in Article 19 of the *United Nations Declaration of the Rights of Indigenous Peoples* (United Nations General Assembly 8).

⁴³ For an analysis of the reconciliatory purpose of consultation in Canada, see: Sonia Lawrence and Patrick Macklem. “From Consultation to Reconciliation: Aboriginal Rights and the Crown’s Duty to Consult.” *The Canadian Bar Review*, 79 (2000): 254. It should be noted that Lawrence and Macklem address consultation requirements for legislation or other measures infringing upon Aboriginal rights in contrast to the *Action Plan*, which does not directly address such. However, the spirit is the same and clearly the authors’ observations have merit in the case of inadequate consultation on the issue of violence against Aboriginal women. The scope of the duty to consult in Canada is limited in part because Canada has not signed on to ILO Convention 169 and explicitly refused to accept the normative imperative to uphold the principles of the UN Declaration on the Rights of Indigenous Peoples and the duty to obtain “free, prior, and informed consent” (Come).

⁴⁴ See Appendix 1-3 for full list.

⁴⁵ See Appendix 1 and 3.

⁴⁶ Less witnesses testifying as an individual mentioned the inquiry (as compared to organizations) because individual testimony was focused more on their personal experience of violence. Further, no witnesses were specifically asked by committee members whether they supported an inquiry.

Sutherland did not explicitly mention an inquiry itself, but instead called for action instead of “spending millions of dollars in hearings.”⁴⁷ However, the need for action is clear and all notable proposals for an inquiry are accompanied by calls for action.⁴⁸

In addition to criticism over its failure to call for a national inquiry, the *SWC Action Plan* has faced significant criticism for its exclusive focus on intra-Aboriginal violence rather than on violence against Aboriginal women by non-Aboriginals. This is a failing of both SCVAIW’s *Invisible Women* report and, consequently, the *SWC Action Plan*. The SCVAIW report fails to present the testimony of those who implicate racism as a motivating factor of violence, only referring to racism as a post-hoc issue of accessibility to services and community response.⁴⁹ Though racism is an inescapable reality in the testimony of family members of victims and victims of violence themselves, there is no recommendation in the *Invisible Women* report to address this. The *SWC Action Plan* similarly ignores the issue and does not mention racism once in the entirety of the plan. Thus, we see again a self-serving selectivity in presentation of and action upon testimony from consultation of Aboriginal groups; testimony is distorted and included selectively so as to confirm pre-existing CPC positions.

Returning to the *Invisible Women* report, racism is prominently addressed in Section 3 as increasing the vulnerability of Aboriginal women to violence.⁵⁰ However, the report ignores testimony concerning racially motivated violence from family member Brenda Bignell. Instead, it states that racism “shapes the experience people have with services which should help them; shapes the ideas and expectations of service providers, whether or not this is intentional on their part; and it shapes the response of the wider community to incidents of violence.”⁵¹ These are important issues. However, witness testimony, international reports and academic literature argue a key point the report ignores: that racism is a root cause of both the high levels of violence against Aboriginal women, and the inaction to address the very same violence.

Of the fourteen Aboriginal victims of violence and family members called to testify before the SCVAIW, six made explicit mention of racism. A family member and victim of violence herself, Brenda Bignell addresses racism perhaps most directly. Bignell recounts how her niece went missing and the RCMP refused to believe she was missing until:

Four years later, the RCMP made a statement and they found out who killed my niece. They found out who killed [her] because he had told on himself. He was bragging about how much he despises native people [...] That’s pretty sad when racism is so thick in this country of ours that this person could actually brag about killing a native person – brag about it. The very nerve of that individual.⁵²

⁴⁷ See Appendix 4.

⁴⁸ This includes both Liberal and NDP dissenting reports, the AFN, the NWAC, and family members such as Brenda Bignell who support an inquiry (SCVAIW, “Evidence – December 9, 2013”, 6).

⁴⁹ Special Committee on Violence Against Indigenous Women, 19.

⁵⁰ *Ibid*, 19-20.

⁵¹ *Ibid*, 19.

⁵² IFWA. 2nd session, 41st Parliament. “Evidence: Monday, December 9, 2013.” *House of Commons*, December 9, 2013.

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6378716&Language=E&Mode=1&Parl=41&Ses=2>

Brenda Bignell's testimony as a whole is not ignored: in fact, the *Invisible Women* report does quote her regarding the "feeling of abandonment felt by many of the families of the victims we met."⁵³ Yet, her mention of racially motivated violence is excluded from the text of the report.

While the exclusion of Bignell's testimony on racially motivated violence could perhaps be rationalized away if instances of such violence were isolated incidents, racially motivated violence against Aboriginal women is in fact widely documented in Canada. Amnesty International's 2004 *Stolen Sisters* report clearly implicates racism and racial inequality as motivators for violence, stating that "these acts of violence may be motivated by racism, or may be carried out in the expectation that societal indifference to the welfare and safety of Indigenous women will allow the perpetrators to escape justice."⁵⁴ The *Stolen Sisters* report further notes that racial motivation for violence was clearly apparent in the trial of John Martin Crawford in 1996 for the murder of three Indigenous women in Saskatchewan. *Stolen Sisters* quotes Justice David Wright who states "Crawford was attracted to his victims for four reasons; one they were young; second, they were women; third, they were native; and fourth, they were prostitutes."⁵⁵ More broadly, the report cites the Aboriginal Justice Inquiry of Manitoba's conclusion⁵⁶ that "racism and sexism intersect in stereotypes of Indigenous women as sexually 'available' to men."⁵⁷

Although both the recommendations section of the *Invisible Women* report and the *Action Plan* address improving the accessibility of support services to victims and family members, neither mentions racism. The testimony of family members from the SCVAIW hearings is muted and Bignell's testimony regarding racially motivated violence is omitted. Rather, the SWC places the locus of culpability squarely upon Aboriginal communities themselves. The *Action Plan* seems at first to move in a positive direction, stating that its projects will "raise awareness through education and related activities" about violence against Aboriginal women.⁵⁸ However, these projects will operate only in Aboriginal communities and will be geared towards "engaging Aboriginal men and boys to prevent violence."⁵⁹ Reviewing the report closely reveals that none of the already insignificant \$25 million devoted to this *Action Plan* will be allocated to raising awareness of this issue in the non-Aboriginal public and countering the structural racism in Canadian culture which contributes to violence against Aboriginal women.

⁵³ Special Committee on Violence Against Indigenous Women, 3

⁵⁴ Amnesty International. "Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada." *Amnesty International*, (March 20, 2004): 2.
<http://www.amnesty.ca/sites/default/files/amr200032004enstolensisters.pdf>

⁵⁵ Amnesty International, 16-17.

⁵⁶ These conclusions are well-supported by academic literature in this area. Utilizing victim, perpetrator, and media evidence, feminist scholars Jiwani, Young, and Kuokkanaen locate several cases of violence against Aboriginal women as racially and sexually motivated violence acting as a means of patriarchal control for several instances of violence against Aboriginal women in Canada (Jiwani and Young 899-900; Kuokkanen 220).

⁵⁷ Amnesty International, 17.

⁵⁸ Status of Women Canada, 7.

⁵⁹ Status of Women Canada, 7. Of further note is that the actual substance of the *Action Plan* on Aboriginal men does not align with research in the area due to its failure to address the influence of colonialism in Aboriginal family violence. Several studies show socio-economic position is an inadequate indicator of violence against Aboriginal women (Daoud) and that structural violence or colonization theory better explain variance (Brownridge; Pulkingham). Without

In justification of this exclusive focus on Aboriginal men, Aboriginal Affairs Minister Bernard Valcourt cited unreleased RCMP statistics indicating that 70% of the perpetrators of the Aboriginal female homicides that were solved were themselves Aboriginal.⁶⁰ However, this justification is highly problematic on three grounds: first, it risks further marginalization of vulnerable populations; second, this rate is not abnormally high compared to other ethnicities; and third, it obfuscates the federal government's responsibility to address the issue by re-focusing blame on First Nations. RCMP Commissioner Brian Paulson clarified that this statistic was excluded from the RCMP Report in "the spirit of [the RCMP's] bias-free policing policy," because "public discourse on the ethnicity of the offender has the potential to stigmatize and marginalize vulnerable populations."⁶¹ Indeed, the ethnicity of perpetrators has not been released for other homicides, creating a troubling dichotomy. Furthermore, while comparative data from Canada is not publically available, 2011 data from the Federal Bureau of Investigation shows that the rate at which perpetrators of homicide were of the same race as their victims in the United States for both white victims (80%) and black (90%) was in fact higher than that for Aboriginal female homicide victims in Canada.⁶²

Of questionable efficacy and dubious ethicality, the exclusive focus of the *Action Plan* upon Aboriginal men further obfuscates federal responsibility to address this issue by shifting blame to First Nations communities without providing adequate support and autonomy.⁶³ Min. Leitch has publically defended this focus on awareness campaigns to counter violence within Aboriginal communities, stating she hopes to focus on "men and boys campaigns."⁶⁴ However, Indigenous groups have criticized this exclusive focus on domestic violence in Aboriginal communities, noting the high prevalence of murders on the Highway of Tears in British Columbia and that many aggressors, including serial killer Robert Pickton, are non-Aboriginal men.⁶⁵ Indeed, non-Aboriginals did perpetrate one quarter (25%) of Aboriginal female homicides which is equal to the total non-Aboriginal female homicide rate.⁶⁶

⁶⁰ Jorge Barrera. "Valcourt used unreleased RCMP data to claim Aboriginal men responsible for majority of murders of Aboriginal women: Chiefs." *Aboriginal Peoples Television Network*, March 20, 2015. <http://aptn.ca/news/2015/03/25/chiefs-say-valcourt-used-unreleased-rcmp-data-claim-indigenous-men-responsible-majority-indigenous-women-murders/>

⁶¹ Bob Paulson. "Letter to Grand Chief Martial." *Royal Canadian Mounted Police*, April 7, 2015. <http://s3.documentcloud.org/documents/1815008/2015-04-07-mmaw-rcmp.pdf>

⁶² Federal Bureau of Investigation. "Expanded Homicide Data Table 6." Last accessed: April 27, 2015. <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/expanded-homicide-data-table-6>

⁶³ The example of Pauktuutit clearly illustrates this issue: underfunding of shelters leaves Pauktuutit unable to adequately address this violence against Inuit women. A further issue related to this subject but beyond the primary focus of this paper is the lack of meaningful self-government afforded to Aboriginal peoples in Canada. For further analysis of the relation between Aboriginal self-government rights and violence against Aboriginal women, see: John Borrows. "Aboriginal and Treaty Rights and Violence against Women." *Osgoode Hall Law Journal*, 50.3 (2013): 707-709. <http://digitalcommons.osgoode.yorku.ca/ohlj/vol50/iss3/9>

⁶⁴ Gloria Galloway. "70 per cent of murdered aboriginal women killed by indigenous men: RCMP." *The Globe and Mail*, April 10, 2015. <http://www.theglobeandmail.com/news/politics/70-per-cent-of-murdered-aboriginal-women-killed-by-indigenous-men-rcmp-confirms/article23868927/>

⁶⁵ Galloway.

⁶⁶ Paulson; Royal Canadian Mounted Police, 9. In 25% of Aboriginal female homicides, the perpetrator is non-Aboriginal (Paulson). The rate of Aboriginal female homicide is four times that of non-Aboriginal female homicides

SWC’s *Action Plan* is a band-aid on a bullet-wound. Furthermore, it is a poorly placed band-aid because the government has not been listening to where those most wounded by this tragic violence say it needs to go. Political self-interest has led to pervasive consultation failures, exclusion of inconvenient testimony, misrepresentation of testimony, and an *Action Plan* nearly universally derided as insignificant, poorly focused, and blatantly partisan. Consultation has exacerbated dissatisfaction with the government rather than functioning as an important pathway to reconciliation. While viewed as a positive step, the February 26 National Roundtable on Missing and Murdered Aboriginal Women has far from resolved concerns about lack of meaningful consultation, coordination, and collaboration on the part of provincial and Aboriginal leaders. Following the roundtable, Ontario Premier Wynne stated: “The fact is that the provinces and territories and aboriginal organizations across the country are working very hard on these issues. We have joined together ... We are on the same page. We are working now to find a partner in the federal government.”⁶⁷ Dr. Dawn Harvard, Interim President of the NWAC, has made clear what metric she will use to measure progress: rates of violence and murder against Aboriginal women. It seems unlikely that Min. Leitch’s *Action Plan* will make any real progress, and if the government continues to take such a minimalist definition of consultation this can only be expected to persist.

Appendices

Appendix 1: Summary of Support from Organizations and Individuals for National Inquiry in Testimony to Special Committee on Violence Against Indigenous Women

National Inquiry	Individuals	All Organizations	Aboriginal Organizations	Government Organizations	NGOs
Support	1	10	5	2	3
Opposed	1	1*	1*	0	0
Not Mentioned (NM)	12	17	11	7	5

*Pauktuutit Inuit Women of Canada preferred resources be directed towards emergency resources in Inuit communities. However, responding to a follow-up by Romeo Saganash,

(RCMP 9). Thus, the rate at which Aboriginal women are murdered by non-Aboriginals is roughly equal to the non-Aboriginal female homicide rate (regardless of perpetrator ethnicity). In simplest terms, on average, an Aboriginal female is as likely to be murdered by a non-Aboriginal person as a non-Aboriginal female is to be murdered at all.
⁶⁷ Joanna Smith. “Aboriginal, federal, provincial leaders agree to keep talking about murdered women.” *Toronto Star*, February 27, 2015. <http://www.thestar.com/news/canada/2015/02/27/aboriginal-federal-provincial-leaders-agree-to-keep-taking-about-murdered-women.html>

Pauktuutit Executive Director Tracy O’Hearn explicitly stated the Inuit priority on increasing shelters and a national inquiry aren’t mutually exclusive.

Appendix 2: Individual Testimony to the Special Committee on Violence Against Aboriginal Women, 41st Parliament

Name of witness	Session and Meeting	Inquiry (Y/N/NM - No mention)	Racism Mentioned (Y/N)
Lisa Big John	2.4	NM	Yes
Brenda Bignell	2.4	Yes	Yes
Wesley Flett	2.4	NM	NM
Connie Greyeyes	2.4	NM	Yes
Patricia Isaac	2.4	NM	NM
Sharon Johnson	2.4	NM	NM
Susan Martin	2.4	NM	Yes
Lorna Martin	2.4	NM	Yes
Amy Miller	2.4	NM	NM
Glen Miller	2.4	*	*
Brenda Osborne	2.4	NM	NM
Robert Pictou	2.4	NM	NM
Bernadette Smith	2.4	NM	NM
Marie Sutherland	1.8	No	NM
Colleen Cardinal	1.8	NM	Yes

**Amy Miller testified on behalf of herself and her husband Glen Miller*

Appendix 3: Organizations Consulted by the Special Committee on Violence Against Aboriginal Women and Girls, 41st Parliament

Name of Organization	Type	Session & Meeting	Inquiry (Y/N/NM)
Hollow Water First Nation	Aboriginal	2.1	NM
Native Women’s Association of Canada	Aboriginal	2.1, 1.6	Yes
First Nations Chiefs of Police Association	Aboriginal	2.2	NM
Rama Police Service	Police/Aboriginal	2.2	NM
National Aboriginal Circle Against Family Violence	Aboriginal	2.2	NM
Assembly of First Nations	Aboriginal	2.3	Yes
National Association of Friendship Centres	Aboriginal	2.3	NM
Ontario Provincial Police	Police	2.3	NM
Canadian Association of Elizabeth Fry Societies	NGO	2.5	Yes
Human Rights Watch Canada	NGO	2.5	Yes
Office of the Federal Ombudsman for Victims of Crime	Government	2.5	Yes
Zebra Child Protection Centre	NGO	2.5	NM
Canadian Women’s Foundation	NGO	2.6	Yes

First Nations Child and Family Caring Society of Canada	Aboriginal	2.6	Yes*
Representative for Children and Youth, BC	Government	2.7	Yes
Department of Justice	Government	1.3	NM
Department of Public Safety	Government	1.4	NM
Department of Indian Affairs and Northern Development	Government	1.4	NM
Statistics Canada	Government	1.4	NM
Status of Women Canada	Government	1.5	NM
Ending Violence Association of British Columbia	NGO	1.7	NM
Ngwaagan Gamig Recovery Centre Inc.	NGO	1.7	NM
Pauktuutit Inuit Women of Canada	Aboriginal	1.7	No**
Caribou Child and Youth Centre	NGO	1.8	NM
Carrier Sekani Family Services	Aboriginal	1.8	Yes
Families of Sisters in Spirit	Aboriginal	1.8	Yes
Royal Canadian Mounted Police	Police	1.8	NM
PACE Sexual Assault and Crisis Centre	NGO	1.8	NM

*First Nations Child and Family Caring Society Executive Director Dr. Cindy Blackstock expressed modest support for an inquiry provided it was accompanied by real action.

**Pauktuutit preferred resources be directed towards emergency resources in Inuit communities. However, responding to a follow-up by Romeo Saganash, Pauktuutit Executive Director Tracy O’Hearn explicitly stated the Inuit priority on increasing shelters and a national inquiry aren’t mutually exclusive.

Appendix 4: Marie Sutherland testimony to the Special Committee on Violence Against Indigenous Women

Thank you.

My name is Marie Sutherland. I'm known as *Waseskwan Biyesiw Iskwew*. That's my Cree name. I work for the Native Women's Transition Centre, and I also work for two different high-risk groups. I am here to voice, as an elder, the violence against aboriginal women and girls, and the missing and murdered aboriginal women and girls, and to address the root causes of the violence against aboriginal women and girls. I have a few examples.

One is women who are leaving abusive relationships on the reserves and coming to the big city to start a new life. Some come with their children, while some have to fight to get their kids back from their ex-partners. These women are very vulnerable. Some come to the city without money when they're leaving abusive relationships. They're tired of getting beat up and abused, and the abuse is not stopping. Some become addicted to drugs and alcohol and are controlled. Women and girls are forced to prostitute themselves. They get raped and beaten. They go missing and they are murdered.

Every day, there is a woman or girl who has been raped and beaten. I hear those stories every day in the kind of work I do. As aboriginal women, we need help from the government to enforce more police services to protect aboriginal women and girls from violence and murder and from going missing.

Every day, I hear stories about girls being raped and girls being beaten—every day—and instead of the government spending millions of dollars in hearings over the next couple of years, we need your help

now, today, to hear us as aboriginal people, and to put some money into the police forces to find who's responsible for the violence, for the missing and murdered women and girls.

We need funds and resources to develop awareness and education programs on the reserves and in schools, programs about violence and the missing and murdered women, because some of these women come from the reserves. They have really big dreams of starting school, but they get grabbed by a pimp and the next thing we see is that they're in the newspaper because they've been murdered.

What I'm asking for most is the protection from violence for the women and children and to find who's responsible for the violence and the murdered women. The government and the police services have the responsibility to provide justice for victims and end the violence.

[Witness speaks in Cree]

That's it: no more violence against aboriginal women.

That's all I have to say. I don't have all the documents because this was given to me as I was leaving from Winnipeg for a different meeting.

Thank you very much for paying attention to me.

CREATING CHOICES: MEANINGFUL REFORM OR CO-OPTING DISSENT?

Victoria Wicks

ABSTRACT. *Creating Choices*, Correctional Services Canada's 1990 report regarding reform of prisons for federally sentenced women, contained a number of arguably feminist recommendations. Yet, its radical rhetoric was never substantively reconciled with the inherently punitive and coercive nature of our carceral system. Specifically, there were serious conflicts regarding 1) structural constraints versus individual responsibility; 2) the accommodation of female prisoners' incredibly diverse lived experiences; and 3) empowerment within a carceral system. Given these unresolved contradictions, *Creating Choices* left a number of loopholes open for Corrections Services Canada to exploit, and ultimately maintain its oppressive treatment of federally incarcerated women. The co-option of *Creating Choices* exemplifies the flexibility of our prison system to absorb dissent and preserve its fundamental structure of unequal, coercive relations. As such, perhaps we should not be asking how prisons can be reformed, but rather, in what ways can they be replaced?

Introduction

In April 1990, a report titled *Creating Choices* recommended a relatively novel, “women-centered” approach to corrections for federally sentenced women in Canada. With its adoption of various feminist principles, *Creating Choices* seemed to be a remarkable victory for social justice activists at the time. Perhaps most radical was the report's promotion of rehabilitation, stating that the “entire mission” revolved around “reintegration into the community, equality, humane treatment, and respect.”¹

However, a close reading of the report shows that it holds numerous contradictions. Most notably, there were serious tensions underlying: 1) structural constraints versus individual responsibility; 2) the accommodation of female prisoners' incredibly diverse lived experiences; and 3) empowerment within a carceral system.

This essay will evaluate each of these conflicts, with analysis framed by broader questions of agency and choice within the criminal justice system. Despite the arguably honest intentions behind *Creating Choices*, Correctional Services Canada (the CSC) ultimately selectively implemented the report's recommendations to perpetuate oppressive power dynamics within prisons. Each aforementioned inconsistency can be linked to a specific instance of the

¹ The subsequent explanation of the report's five foundational principles —empowerment, meaningful and responsible choices, respect and dignity, supportive environment, and shared responsibility — reemphasizes this broader emphasis on rehabilitation. See: The Task Force for Federally Sentenced Women (hereafter TFFSW), *Creating Choices* (Ottawa: Ministry of the Solicitor General, 1990), <http://www.csc-scc.gc.ca/women/toce-eng.shtml>, Preface, Chapter X.

CSC manipulating feminist rhetoric to maintain the status quo. As such, this essay concludes with a brief reflection on prospects and relevance of penal reform.

Where does the responsibility of criminality lie?

In its early chapters, *Creating Choices* effectively recognizes the structural nature of discrimination that many female prisoners face, and the centrality of such oppression in shaping women's criminality. For example, under the heading "Roots of the Problem," the Manitoba Action Committee on the Status of Women is quoted saying: "Social factors, such as poverty, unemployment, education, child and sexual abuse, are key in understanding women's involvement in crime."² This is clearly compatible with the feminist discourse at the time, which sought to frame the plight of federally sentenced women within the broader issue of sexism. Joanne Valley, Directrice Générale of the Association des services de réhabilitation sociale du Québec, explicitly makes this connection in *Creating Choices* by stating: "...female offenders' problems of dependence often have the same roots as the problem of dependence experienced by women in general."³ Again, there is a linkage made between women's crime and larger, structural issues of gender discrimination. The use of the word "roots" also signals to readers that the source of women's criminality is much deeper and systemic than each individual offender's choices.

The report's research regarding Aboriginal women's experiences is particularly sensitive to how structural discrimination can lead to criminality. An Aboriginal parolee, who also served as a member of the Task Force and Aboriginal Women's Caucus, explains in Section B of *Creating Choices* that: "Racism lies at the root of our life experiences. The effect is violence, violence against us, and in turn our own violence."⁴ Once more, the word "root" speaks to the pervasive and structural nature of oppression. This statement also neatly sums up the cycle of institutional violence that helps perpetuate Aboriginal women's criminality.

Such qualitative feedback from federally sentenced women and relevant researchers allows us to dispel common myths about why crime is committed. For instance, when looking at purely numerical research, it is clear the rate of imprisonment for minority groups—such as Aboriginal and black people—is increasing in Canada. Specifically, CBC reported in 2013 that: "The rate of incarceration of aboriginal women increased by 80 per cent in the past decade."⁵ Some may be quick to argue these increased incarceration rates are simply a product of minority groups who are committing more crime, and by extension, are inherently more delinquent than other groups. However, the qualitative research in *Creating Choices* sheds light on an alternate causal relationship—perhaps structural discrimination is becoming worse, which leads to heightened violent responses from marginalized groups. Evaluating the truth of these causal claims is beyond the scope of this essay. Yet, it stands that *Creating Choices* makes an important acknowledgement of broader societal constraints on women's lives. This reminds us not to place blame and responsibility solely upon individual offenders. What is more, the focus on societal

² Ibid., Chapter III.

³ Ibid.

⁴ Ibid., Chapter I.

⁵ Maureen Brosnahan, "Canada's prison population at all-time high." (*CBC.com*, 27 November 2013), <http://www.cbc.ca/news/canada-s-prison-population-at-all-time-high-1.2440039>.

constraints implies that widespread, cultural shifts must occur in order to curb women's criminality. The "fixing" then, is of structures and institutions.

This structural understanding of criminality seems to be relocated later on, when the report identifies the central cause of crime within each woman. Most notably, the guiding principles of *Creating Choices* argue that women's low self-esteem, an internal trait, "can contribute to violence against others" and "reduces a person's ability to...take responsibility for her actions."⁶ The report also recommended that "[e]ach woman will be encouraged at the earliest possible point in her sentence *to take responsibility for her life and her criminal activity*" (emphasis added).⁷ By identifying the problem within each offender, *Creating Choices* implies it is individuals, not structures, that need the ultimate "fixing."

The report's emphasis on individual responsibility is not necessarily problematic. Ostensibly, the report was attempting to attribute agency to federally sentenced women. As Kelly Hannah-Moffat explains, viewing federally sentenced women as responsible agents acknowledges that each is "capable of making choices, putting up resistance, and changing her situation."⁸ This framing corresponds directly with feminist calls for empowerment. In any case, discussion of criminal justice must take into account both structural constraints and individual agency—such a nuanced discussion contextualizes crime, without pathologizing offenders.

However, the report failed to clearly reconcile these two issues when discussing recommendations for reform. Specifically, the report extended the logic of individual responsibility to recommend that federally sentenced women be the main agents behind their rehabilitation. It explicitly states that "[t]he institution does not rehabilitate the offender, the woman makes choices to create a more responsible, self-sufficient future (and thereby) rehabilitates herself."⁹ The report's emphasis on an individual's responsibility for their own rehabilitation ignores how structural, systemic oppression—which is present in both society and prison—presents an obstacle to their rehabilitation. Subsequently, during implementation of *Creating Choices*, the CSC could co-opt the rhetoric of responsibility and shift the burden of rehabilitation and risk management from themselves onto individual offenders. This absolves the CSC of any responsibility to critically evaluate and restructure their institution along more equitable terms. As Hannah-Moffat shows, the CSC indeed distorted the feminist conception of individual responsibility to legitimate their coercive discipline methods.¹⁰

For example, a woman would be held responsible for choosing and attending the "right" programs to deal with their substance abuse or trauma. If they fail to participate in such programming, regardless of the actual reason, federally sentenced women can be "constructed as being in denial or as defiant and uncooperative, and therefore more risky."¹¹ This construction of a "bad" prisoner provides ample grounds for the CSC to mobilize more coercive punishment—these include segregation, revocation of privileges, or even cancelation of privileges.¹² The

⁶ TFFSW, *Creating Choices*, Chapter X.

⁷ *Ibid.*, Chapter XI.

⁸ Kelly Hannah-Moffat, *Punishment in Disguise: Penal Governance and Federal Imprisonment in Canada* (Toronto: University of Toronto Press Incorporated, 2001), p.155.

⁹ TFFSW, *Creating Choices*, Chapter V.

¹⁰ Hannah-Moffat, *Punishment in Disguise*, p. 172-175.

¹¹ *Ibid.*, 174.

¹² *Ibid.*

narrow focus on the individual's responsibility and failure to manage their own rehabilitation hides the structural obstacles to healing within prisons. Unsurprisingly, a report published in 2008 called *Locked In, Locked Out* noted how federally sentenced women wished for an increased focus on "understanding the underlying reasons for their drug/alcohol abuse."¹³ The word "underlying" here creates effects similar to the usage of the word "roots," in that it implies there is a deeper, more widespread cause of problems than the individual offender's pathology. In fact, given the CSC's clear failure to recognize such obstacles to rehabilitation, *Locked In, Locked Out* specifically recommends that the CSC "provide alternative frameworks for understanding women's criminalization that... involves understanding of structural, systemic, and relational factors, such as racism, poverty and violence that affects women's lives."¹⁴

Can prisons and penal reform sufficiently accommodate diverse lived experiences?

Creating Choices makes an explicit effort to include, highlight, and centre the experiences of Aboriginal women in its analysis of the penal system. From simply looking at the report's table of contents, we can see that an exclusive space has been carved out for "Voice of Aboriginal People" in Chapter II. This trend of specifically addressing Aboriginal women's concerns is continued through the rest of the report, as indicated by section headings like "The Unique Realities of Aboriginal Women are Not Recognized" and "Interviews with Aboriginal Federally Sentenced Women in the Community." Most notably, the report recommends creating a separate Aboriginal Healing Lodge, which acts as "a safe place for Aboriginal women prisoners" by providing a holistic approach to rehabilitation.¹⁵ This includes hiring Aboriginal facilitators, creating culturally sensitive programming, and providing access to Aboriginal Elders.¹⁶ Clearly, *Creating Choices* was sensitive to the intersections of Aboriginal and gendered identity within prisons. For instance, the Aboriginal voices in Chapter II stated: "We cannot be either women only or Aboriginal only. Our race and our gender are integrally linked." This intersectional approach was a small, yet progressive step in reversing the erasure of Aboriginal women's experiences in Canadian history.

However, this particular focus on Aboriginal identity fails to recognize how racism manifests for other minority racial groups, and overlooks other intersections like class, ability, or sexual orientation. As Hannah-Moffat outlines, this oversight leaves black women inmates feeling slighted, as they have not been consulted during the reform process.¹⁷ *Creating Choices* thus raises important, yet unanswered questions about the extent to which diversity of lived experiences can or should be explicitly recognized and accommodated. While it is arguably necessary to acknowledge various forms of oppression, it is seemingly impossible to incorporate separate and specific programming for each intersection of identity. It is also unclear as to whether this would even be desirable, as it fractures the idea of "women-centeredness." As it stands, *Locked In, Locked Out* underscores the current reality of the system—federally sentenced women continue to face human rights violations "on the basis of their gender, culture, and

¹³ Shoshana Pollack, *Locked In, Locked Out: Imprisoning Women in the Shrinking and Punitive Welfare State*, (Elizabeth Fry Societies of Canada, 2008), <http://www.efryottawa.com/documents/LockedInLockedOut-SPollockresearchreport.pdf>, p. 19.

¹⁴ *Ibid.*, 31.

¹⁵ TFFSW, *Creating Choices*, Chapter XI.

¹⁶ *Ibid.*

¹⁷ Hannah-Moffat, *Punishment in Disguise*, p. 192.

mental/physical disability.”¹⁸ Although extended discussion of accommodating diversity is beyond the scope of this essay, these contradictions in *Creating Choices* provide a starting point for evaluating this issue.

This is not to mention that *Creating Choices* was unclear as to how Aboriginal concepts of communal justice could be reconciled with the inherently retributive prison system. The Aboriginal voices in Chapter II declared from the outset that their worldview “is not accepting of hierarchies.” In this way, they focus on collective interests, rather than individual interests. As the John Howard Society of Manitoba explains:

[Aboriginal people] endorse a restorative model of justice rather than a retributive one. Mediation, reparation, and reconciliation are the best methods... We want this to be... a non-criminal model with focus on the offenders within their culture and community.¹⁹

These definitions of Aboriginal justice are essentially antithetical to the structure of Canada’s criminal justice system. The former emphasizes a circular relationship between the offender, the victim, and community at large, while the latter paints crime as a two-way relationship between the offender and the state.

Creating Choices seems to be aware of this tension, but simply glosses over it with euphemisms, instead of directly explaining how Aboriginal practices could co-exist under the retributive penal system. In its recommendation plan, the report says “[t]he Healing Lodge will be administered to the largest extent possible through a non-hierarchical model” (emphasis added).²⁰ Without defining what this extent actually was, *Creating Choices* failed to outline a particular standard upon which to restructure power relations within the prison system. The report further states that while a co-ordinator “will have certain responsibilities to other [CSC] officials” they also have to “liaise and work co-operatively with the Elders’ council, the Aboriginal community, and the women.”²¹ This use of vague terminology attempts to hide how the co-ordinator continues work within a hierarchy, as they must report to a presumably higher-up CSC administrator. Using the word “co-operatively” implies power sharing, but there is no affirmation that the co-ordinator is communicating with federally incarcerated women on an even remotely equal level to them. With no explicit guidelines for respectfully incorporating Aboriginal practices within the penal system, the CSC could simply maintain the status quo. Even more troubling, “many elements of [A]boriginal culture have been appropriated and redefined to fit the wider correctional agenda.”²² Perhaps most perturbing is that the Healing Lodge is exclusive; not all Aboriginal women have access to it.²³ Therefore, despite *Creating Choices*’ best intentions to acknowledge Aboriginal experiences, the CSC corrupted Aboriginal practices in order to fit its vision of retributive justice.

Is empowerment possible within the carceral context?

¹⁸ Shoshana Pollack, *Locked In, Locked Out*, p. 7.

¹⁹ TFSSW, *Creating Choices*, Chapter III.

²⁰ *Ibid.*, Chapter XI.

²¹ *Ibid.*

²² Hannah-Moffat, *Punishment in Disguise*, p. 159.

²³ *Ibid.*, 160.

Heavily influenced by feminist discourse at the time, *Creating Choices* outlined that prison reform needed to be guided by the five “principles of change,” the first of which was “empowerment.”²⁴ Empowerment is connected to the idea that federally sentenced women, like women more generally, have eroded self-esteem due to structural inequalities. Such disempowerment leads to the belief that women have little power to direct their lives: “they feel...unable to create a more rewarding, productive future, even if realistic choices are presented to them.”²⁵ Consequently, the second principle of change in the report suggests that prison reform must provide women with “responsible and meaningful choices.”²⁶ By empowering women to make such choices, women can “gain control over their lives” and be more prepared for re-integration into society.²⁷ Specifically, offering meaningful and responsible choices within prison “will better mirror life outside, and so will provide a more realistic environment in which to foster self-sufficiency and responsibility.”²⁸ Here, the report suggests that offering more options for programming can mitigate the power dynamics that led women to feel disempowered in the first place. *Creating Choices* goes on to elaborate that prison staff must treat federally sentenced women with “respect and dignity,” so as to create a “supportive environment” for rehabilitation.²⁹ These goals are the third and fourth principles of change, respectively. Ultimately, these principles aim to recognize women’s individual agency—by treating women with respect and support, prison staff can empower women to make responsible choices for themselves. In itself, the rhetoric is not necessarily problematic.

However, as with the issue of adopting Aboriginal practices, the report fails to outline how this empowerment can be practically achieved within institutions that are inherently repressive. Prisons are founded upon limiting individual expressions of autonomy; restricting choice is an inevitable product of unequal power dynamics between guards and prisoners. As Hannah-Moffat notes: “[i]t is difficult to imagine how meaningful, respectful, and supportive relationships can develop when guards continue to perform strip searches, open women’s mail, monitor their relations with others...and at times punish prisoners for infractions against institutional order.”³⁰ This quote speaks directly to the hierarchical and coercive structure of prisons. As such, true empowerment and meaningful choice seem unthinkable within this framework.

Creating Choices attempts to disguise this problem by painting an idealized picture of reformed prisons, once again using euphemisms when discussing its recommendations. The report depicts prisons as mere “facilities,” calls guards or correctional officers “staff,” and mentions “bedrooms” instead of cells.³¹ The word “cottages” also invokes scenes of the quaint English countryside, especially with the report’s emphasis on “natural light, fresh air, colour, space, privacy, and access to land.”³² This diction deliberately draws attention away from the inherently disciplinary and controlling mandate of prisons. It does nothing to fundamentally restructure the imbalanced power dynamics between prisoners and prison guards. Rhetoric alone

²⁴ TFPSW, *Creating Choices*, Chapter X.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Hannah-Moffat, *Punishment in Disguise*, p. 194.

³¹ TFPSW, *Creating Choices*, Chapter XI.

³² Ibid.

fails to address how women will actually be able to feel empowered within a fundamentally repressive institution.

As such, the CSC was able to maintain the unequal relationship between federally sentenced women and correctional officers, and continue its coercive practices in a hierarchical manner. Prisons fail to treat federally sentenced people with respect or dignity, nor do they provide supportive environments for healing. As Susan states in *Locked In, Locked Out*: "...every day you're reminded of what a shit-ass person you are for committing a crime...it is like a psychological death sentence."³³ Clearly, such sentiment is not conducive to feelings of empowerment. Specifically, the use of the phrase "death sentence" speaks to the feeling of inevitability, or lack of meaningful choice available to women to change their futures. In particular, there is a clear contradiction between notions of empowerment and choice, and how prisons mandate a standard program of rehabilitation.

Steph, one of the prisoners who was also interviewed for *Locked In, Locked Out*, summarizes this issue well. She explains having to "heal 'on their terms,' which means adopting routines, strategies and methods employed at the Healing Lodge or risk being penalized."³⁴ If federally sentenced women cannot reject an option or say "no" without being punished, it is clear that they are not actually being afforded meaningful choices to empower themselves and take control of their lives. This is the ultimate contradiction between the empowerment rhetoric in *Creating Choices* and the lived reality of federally sentenced women.

Conclusion

The ultimate failure to implement *Creating Choices*' arguably well-intentioned and relatively radical recommendations raises significant questions about the prospects of penal reform. In each inconsistency evaluated above, the CSC was able to manipulate or co-opt principles to maintain the hegemonic structures of prison institutions. In fact, the system is clearly flexible enough to absorb dissent, while also maintaining its fundamental structure of unequal, coercive relations. Through the above analysis, I hope to have shown how our current prison system remains based upon notions of repression and seems inherently antithetical to practices – such as individualized programming, reconciliation, empowerment, and meaningful choices – which facilitate the dignified and successful rehabilitation that *Creating Choices* hoped to achieve.

As such, perhaps we should not be asking how prisons can be reformed. Rather, in what ways can we replace them? While the possibilities for alternatives are beyond the scope of this essay, this close reading of *Creating Choices* hopes to have proved a useful starting point for discussing broader questions of agency and choice within the criminal justice system. Through such evaluation, we can continue important conversations about the effectiveness, relevance, and ultimate justice of our current prison system.

³³ Shoshana Pollack, *Locked In, Locked Out*, p. 17.

³⁴ Ibid.

**THE “BALANCED” FAMILY:
SEX SELECTION AND HETERONORMATIVITY**

Natasha Procenko

ABSTRACT. Sex selection for non-medical reasons is a highly contested issue in the field of bioethics. This paper closely examines the ethics of preconceptual sex selection within the context of family balancing, which entails using sperm sorting technology as a means to virtually guarantee children of both sexes in a family setting. Using feminist and queer theoretical frameworks, it will be argued that this practice is inherently rooted in heteronormative assumptions that conflate physiological sex with social and psychological gender. By contributing to and reinforcing assumptions that discriminate against and oppress gender non-conforming people, this paper concludes sex selection for purposes of family balancing is not ethically defensible.

The advancement of reproductive technology, which allows for a greater degree of control over the genetic characteristics of offspring, brings with it an array of important ethical considerations with far reaching scientific and societal implications. This paper focuses on preconceptual sex selection within the context of family balancing, which entails using sperm sorting technology as a means to ensure children of both sexes in a family setting. Within this context, the process of sex selection generates unique ethical quandaries that are overlooked in other methods of sex selection. That is, preconceptual sex selection avoids ethical objections involving the moral status of entities, as it does not involve the termination of the fetus (as in sex-selective abortion) or the disposal of embryos (as in sex-selective embryo transfer). Thus, the discussion at hand is solely about the ethics of sex selection itself rather than the ethics of the methods employed to achieve this end. Additionally, because family balancing entails procuring children of both sexes, this discussion will grant the premise that selection stemming from this motive operates separately from motives of sex-preference in the context of patriarchal society, thereby avoiding consequentialist and harm-based objections relating to the distortion of the sex ratio and the reinforcement of pro-male sexism. In light of this narrowed topic, the goal of this paper is to discuss the ethical indefensibility of preconceptual sex selection for non-medical reasons. Using feminist and queer theory, it will be demonstrated that the motive of selecting sex for purposes of family balancing is inherently rooted in heteronormative assumptions. This in turn contributes to and reinforces gender discrimination and harmful gender stereotypes, thereby rendering this practice ethically indefensible.

Feminist and queer theory has long maintained a distinction between sex and gender. The theoretical frameworks define sex as an anatomical category, while gender is described as an adopted or imposed social condition and psychological identity.¹ Conflating the two is in sync with a wider phenomenon known as *heteronormativity*: the conviction that heterosexuality is the only norm, further requiring two dichotomous genders that involve the alignment of sex,

¹ Diamond, Milton, "Sex and Gender are Different: Sexual Identity and Gender Identity are Different." *Clinical Childhood Psychology and Psychiatry*, 7, no. 3, (2002): 320-334

sexuality, gender identity and gender roles. It is a heteronormative and essentialist assumption to associate biological *maleness* with social and psychological concepts of *masculinity* and *manliness*; and conversely, biological *femaleness* with social and psychological *femininity* and *womanliness*. Over the past half century, much philosophical, social and cultural anthropological work has been done to negate such dominant heteronormative assumptions; one only needs to look to Margaret Mead's work on cultural conditioning, or the central tenants of the LGBT pride movement (as a contemporary example), to understand how the distinction between sex and gender has come to be accepted across multiple disciplines. While many would argue that sex and gender are related in some aspects, feminist and queer theory shows us that the two are distinct from one another, and are best understood as independent concepts.²

The heteronormative conflation of sex and gender is well-founded in notions of sex selection technologies. When choosing for a particular sex, the expectation is that the offspring will identify with the respective heteronormative gender and take on associated gender roles. This is evident in the way in which fertility clinics advertise the service: Seavilleklein and Sherwin point out that fertility experts often perpetuate "false and troubling expectations about the connections between biological (chromosomal) status and the social category of gender through their participation in ambiguously described 'sex selection' practices."³ That is, even though it is sex selection via chromosome selection that is being offered, gender selection is advertised. For example, the Genetics and IVF Institute (GIVF) in California writes on their website about a "highly important new sperm separation technique for preconceptual *gender* selection."⁴ While the technology they are speaking of (MicroSort®) can separate XX from XY sperm, or female-producing from male-producing sperm, it is false to advertise the technology as gender-selecting since chromosomes, although sexed, are not determinative of gender characteristics.⁵

Parents who opt to select sex for purposes of family balancing are also motivated by heteronormative assumptions, insofar as it is not a child with different genitals that is sought, but a child who conforms to a particular gender role; that is, the gender role opposite to the children that a family currently has. The desire to have children of both genders may stem from an assortment of motives; for example, parents may want their children to grow up in a more wholesome environment, learning inclusiveness and open-mindedness, through constant exposure to siblings of the opposite gender. Perhaps a mother, who only has sons, craves the feminine bond that she believes only a daughter will bring her; or a father wants to provide a son with what he lacked growing up. Maybe parents simply desire the different relational experiences that they believe rearing a child of a certain gender will bring them.⁶ There are numerous possible reasons for family balancing, but each is explained by way of assumptions about gendered identities and social roles – including the interests, behaviors and practices that are considered appropriate for girls and boys – rather than biological sex. That is to say, in family balancing, it is not a male or a female child that parents desire *per se*, but rather, a child that demonstrates masculine or feminine gender traits. These gendered expectations about the

² Ibid

³ Seavilleklein, Victoria, and Susan Sherwin, "The Myth of the Gendered Chromosome: Sex Selection and the Social Interest." *Cambridge Quarterly of Healthcare Ethics* 16 (2007): p. 7

⁴ Genetics and IVF Institute. n.d. Accessed January 2015. www.givf.com. Emphasis added.

⁵ Butler, Judith, *Undoing Gender*. New York: Routledge, 2004

⁶ Robertson, John, "Preconception Gender Selection." *American Journal of Bioethics* 1, no. 1 (2001): 2-9.

dichotomous roles of men and women, although less rigid than in many parts of the world, are widely present in Western society. Sex selection, for purposes of family balancing, is therefore inherently rooted in heteronormative assumptions and expectations involving the conflation of sex and gender, which as argued above, is an illusory relationship, insofar as sex and gender as categories are not wholly dependent on one another, but are uniquely distinct.

Within the framework of heteronormativity, there is wide discrimination against groups who do not fit into sexed and gendered norms. There are many examples of groups that stand in deviation to the assumption that there is a one-to-one correlation between sex and gender, and that sex and gender are simple dualisms. Such examples include intersexed individuals, who are characterized by variation in sex traits (including chromosomes and gonads) and therefore cannot be identified as physiologically male or female; transvestites and transsexuals, who are deviants to the assumption that biological sex necessarily correlates with gender roles; homosexuals and bisexuals, whose sexual orientation diverges from sexed expectations; and, to a certain extent, female “tomboys” and male “sissies,” who do not conform to stringent gender roles.⁷ In these examples, harmful gender expectations that are reinforced within a framework of heteronormativity limit the life options of certain groups, as is illustrated through the discrimination and injustice that transgender and gender non-conforming people have been shown to face. Grant et al. demonstrate that members of this group are much more likely to live in poverty, to attempt suicide, and to be the victim of harassment and abuse in institutional settings than is the general U.S. population.⁸ When a sex/gender alignment is considered the social norm, those who do not fit this norm are deemed inferior to those who do. Grant et al. argue that subjecting transgender and gender non-conforming people to such commonplace disrespect, violence and abuse is an outright denial of human dignity that reflects “particular vulnerabilities and unaddressed needs.”⁹ From a social justice perspective, such discrimination illustrates a sort of moral inequity that is perpetuated by a value system in which heteronormative assumptions dominate. In this respect, inferring stringent gendered assumptions from biological sex is a harmful and discriminatory practice. From this, it follows that sex selection for family balancing—which, as has been argued above, is inherently rooted in such heteronormative motives—is discriminatory and ethically problematic insofar as it expresses and reinforces potentially harmful gendered assumptions.¹⁰

Robertson, in his argument that defends sex selection, conveys an account that, modified slightly, provides an objection to the argument I have formulated.¹¹ Robertson’s account holds that even if it reinforces sexism to recognize gender differences, to be considered ethically impermissible it still must be shown that sex selection is so harmful that it justifies restricting procreative choice.¹² Modified to my account, Robertson would argue that even if it is inherently discriminatory to make socially harmful gendered assumptions in relation to biological sex, it does not follow that sex selection is unethical since the harms have not been shown to warrant

⁷ Seavilleklein, and Sherwin, *The Myth of the Gendered Chromosome*

⁸ Grant, J. M., L. Tanis, L. Harrison, J. L. Herman, and M. Keisling, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011

⁹ *Ibid*, p. 178

¹⁰ Dorndop, W, G De Wert, G Pennings, F Shenfield, P Devroey, B Tarlatzis, B Barri, and K Diedrich, "ESHRE Task Force on ethics and Law 20: sex selection for non-medical reasons." *Human Reproduction* (2003): 1-7

¹¹ Robertson, *Preconception Gender Selection*

¹² *Ibid*

the limitation of procreative freedom. Harris makes a similar argument, pointing out that within a framework of rights-based liberalism, selecting sex is a matter of personal reproductive liberty that “will not be constrained unless very good and powerful reasons can be produced to justify such infringement of liberty.”¹³ Indeed, proponents of the harm principle put the burden of proof on those who wish to limit or restrict certain actions. There is significant ethical and legal debate about whether or not sex selection constitutes an exercise of procreative liberty; however, granting that it does, as de Melo Martín argues, proponents of liberty-based arguments who appeal to the harm principle to defend sex selection do so “without providing a defense of their particular understanding of harm, the way to balance harms, or what counts as serious harms.”¹⁴ That is, without the supplementary support of other normative considerations, the harm principle on its own cannot adequately explain why the reinforcement of harmful gender norms does not constitute a great enough harm to justify the restriction of procreative liberty.

Advocates of the harm principle maintain that evidence of harm must be clear and persuasive if an action is to be legitimately restricted. However, what counts as clear and persuasive evidence varies widely. For example, some maintain that speculations of psychological hardship do not constitute legitimate harm; others argue that it cannot be considered harmful if an action is contrary to religious or moral belief. While every normative understanding of harm cannot be covered here, it has already been shown that heteronormative values actively work to discriminate against and oppress gender non-conforming people, limit their life options, and lead to the denial of human dignity. Given the considerable amount of clear and substantive evidence to support these findings,¹⁵ why should the reinforcement of such norms *not* be considered harmful? Indeed, pushing individuals into life situations in which they are significantly more likely to live in poverty and be victims of abuse goes beyond harm as contrary to a religious view, or harm as psychological hardship. Rather, stringent gender norms bring about harms with very real dimensions. The reinforcement of stringent gender norms causes sufficient harm to warrant the restriction of procreative liberty by any reasonable normative understanding of harm, and the burden of proof is on proponents of rights-based liberalism to show otherwise.

Advocates of sex selection may respond to this claim by arguing that not all people who would like to choose the sex of their children for family balancing purposes are motivated by heteronormative beliefs; however, heteronormative values are inherent to the whole concept of family balancing, insofar as gender expectations are necessary to determine what must go on the other end of the scale to make it balanced. It could also be argued that gender-expectations and heteronormative values will be held in families regardless of whether or not sex-selective procedures are used. Be that as it may, this fact does not make non-medical sex selection any less ethically indefensible since the reinforcement of heteronormative values are still harmful, regardless of the medium in which such values are perpetuated. Because the reinforcement of gender norms is discriminatory and harmful to gender non-conforming individuals, and because sex-selection for family balancing purposes is inherently motivated by such heteronormative assumptions, sex selection for family balancing purposes is not ethically defensible.

¹³ Harris, John, "Sex Selection and Regulated Hatred." *Journal of Medical Ethics* 31 (2005): p. 291

¹⁴ de Melo-Martín, Inmaculada, "Sex Selection and the Procreative Liberty Framework." *Kennedy Institute of Ethics Journal* (John Hopkins University Press), 23, no. 1 (2013): p. 9

¹⁵ Grant et al., *Injustice at Every Turn*

ESTABLISHING INTEGRITY IN MUNICIPAL GOVERNMENT

Megan Brooks

ABSTRACT. While many of Ontario's cities have incorporated ethics commissioners into their municipal governments, numerous municipalities have failed to follow Toronto in the creation of an Office of the Integrity Commissioner. In this paper, I explore why integrity officers should be mandatory in all of Ontario's major cities. In the first section of the paper, the importance of ethics in government is established. The second section presents a discussion of the literature reviewing the effectiveness of formal accountability and transparency structures. In the third section, current ethics legislation and guidelines intended to encourage ethical conduct in Ontario municipalities are reviewed. Finally, case studies of Toronto and London are used in support of the conclusion that, in addition to a government official's personal judgment and values, education, rules and procedures must be used to ensure integrity in government.

Introduction

The media frenzy around Rob Ford's controversial actions, both as City Councillor and Mayor of the City of Toronto, generated a renewed public interest in municipal ethics. The Rob Ford video scandal, in which the mayor was recorded smoking crack cocaine, prompted debates about the conduct that citizens expect of their municipal representatives. Ford's actions as mayor lacked integrity; however, much of his conduct did not fall under the law's jurisdiction. Despite investigation, the police laid no charges against him and Ford returned to office after a voluntary two-month leave of absence in rehab. In the end he was not held accountable for his unethical conduct, and as a result, both city council and the public are sceptical about his ability to maintain moral integrity in political office. Scandals at the municipal level, such as the crack video scandal or the earlier Toronto computer leasing scandal, which revealed bribery and conflicts of interest in the city's computer leasing contracts, have influenced how the public perceives the ethical behaviour of politicians and how accountability officers regulate this behaviour.

Many of Ontario's larger cities have incorporated ethics commissioners into their municipal governments, but few have created a formal Office of the Integrity Commissioner, as Toronto has. By comparing Toronto to London, an Ontario municipality that continues to function without an integrity commissioner, this paper explores how accountability structures and ethical culture in municipalities have changed since the revisions made to Ontario's *Municipal Act* in 2006, and whether these changes support the overall goal of integrity, transparency and accountability in government. Ultimately, I argue that it should be mandatory for all municipalities in Canada to develop an accountability structure that includes an Office of the Integrity Commissioner in order to promote a strong culture of ethics in government.

This paper proceeds in four steps. First, I establish the importance of ethics in government, focusing on why principles of accountability and transparency are integral to fostering public confidence in politicians. Second, I review the literature that claims that formal accountability structures reduce personal responsibility of politicians to develop ethical values. Third, I measure this literature against current ethics legislation and guidelines intended to

encourage ethical conduct in Ontario municipalities. Finally, case studies of Toronto and London are presented as evidence demonstrating why integrity commissioners should be mandatory in all of Ontario's municipalities.

The Importance of Ethics In Government

Elected government officials are expected to manage public resources in a fair, honest and respectful manner. These public servants in local government are tasked with upholding Canadian democracy by accomplishing their jobs in a way that best reflects the public interest. As they are acting in service to and on behalf of the public, it is of the utmost importance that a government is trusted and perceived by the public as an ethical institution that promotes both democratic and professional values. Loss of public confidence in government will occur when the government lacks accountability and public trust. The best way to show the public that their interests are being prioritized is to create a system where their constituents can scrutinize the government's actions and decisions so that government employees can be held accountable for any misconduct.

Many people see political corruption as a natural part of government. Using data from the British Cooperative Campaign Project, Birch and Allen sought to determine whether the British public expect politicians to follow the ethical codes expected of members of the general public or if they are expected to follow a more stringent moral code because of their position of power.¹ The public reported a belief that the ethical standards of politicians are declining: "the way politics is conducted these days makes politicians less honest and trustworthy than they used to be."² The ethical behaviour of elected officials is important to members of society. People want their politicians to be held to a greater ethical standard than the average person.³

Canadians feel the same way about their municipal elected representatives. In a nationally representative 2014 survey released by the Ted Rogers School of Management, researchers found that "more Canadians are dissatisfied with the ethical behaviour of municipal politicians (31%) than satisfied (22%)" and "residents of the GTA are particularly unlikely to be satisfied with the ethical behaviour of municipal politicians."⁴ The same study also discovered that 74% of Canadians believe that an independent ethics commissioner is necessary to regulate political ethics.⁵ This study, along with the Birch and Allen study, suggests that the public wants more formal ethical structures in place to hold their elected representatives responsible for their behaviour. For politicians to earn public trust, principles of accountability and transparency need to be well established within municipal government.

Social modernization and economic change contribute to declining public trust in politicians. Dalton observes, "younger generations benefit from a society with higher living standards, and more freedoms than their parents enjoyed."⁶ Since the 1970s, changing public values and expectations have increased, producing sceptical attitudes towards politics and

¹ Sarah Birch and Nicholas Allen, "How Honest Do Politicians Need to Be?" *Political Quarterly* 81.1 (2010): 51.

² Birch and Allen 52.

³ Birch and Allen 51.

⁴ Jim Pattison Ethical Leadership Program, *Public Perceptions of the Ethics of Political Leadership*, (2014), 13.

⁵ Jim Pattison Ethical Leadership Program, 46.

⁶ Russell J. Dalton, "The Social Transformation of Trust in Government," *International Review of Sociology* 15.1 (2005): 149.

government. A more sceptical public has resulted in a general decline in trust of politicians in most advanced industrial democracies.⁷ Trends of decreasing trust in politicians can also be attributed to higher ethical expectations. The availability of public information we have come to expect as well as media coverage of high-profile ethics violations, such as the Toronto Computer Leasing Inquiry and the Canadian Senate expenses scandal (in which a number of Canadian senators were filing ineligible travel and housing expenses), has created a political atmosphere where we demand transparency and accountability from our political representatives.

Nye points to the distorting effect of the media to explain the popular distrust of government.⁸ News stories about political issues and scandals are approached in ways that make it seem like political corruption is widespread and out of control. The public is more interested in hearing about scandal and corruption than the everyday workings of bureaucracy and political life. Many people rely on the mass media as a primary source for their information about politics. While the state of government ethics is not as bad as the media sometimes portrays it, the type of news people have come to expect from the media consists of negative advertising, political scandals, and critical news commentators, which contribute to “a popular belief in bad, disconnected government.”⁹ Media coverage has led to popular discontent and erosion of trust in politicians.

Instilling values of integrity and accountability in politics can be achieved through the promotion of a strong ethical culture. The Ethics Resource Center, a non-profit organization aimed at advancing high ethical standards in public and private organizations, emphasizes that “the strength of a company’s ethical culture is the extent to which the organization makes doing the right thing a priority.”¹⁰ Justice Bellamy of the Ontario Superior Court of Justice spoke of strengthening a city’s culture of ethics in her report for the Toronto Computer Leasing Inquiry. In 1999, Toronto City Council decided that MFP Financial Services Ltd. would supply the city government with its computer needs. The inquiry into the computer leasing contracts revealed that there were strong conflicts of interest and bribes made between City Council and individuals in MFP. In the “Good Government” section of her report, Bellamy asserts that every institution, like the City of Toronto’s government, has a culture: “the unwritten ways people believe they can and should – and therefore do – act.”¹¹ Formal culture, such as written laws and policy, is one way to foster moral and ethical behaviour in an organization, but there are also informal ways to influence values, such as modeling one’s behaviour from what is observed of others. A strong culture of ethics is achieved when the informal and formal culture reinforce each other.¹² Both informal and formal mechanisms need to promote and reflect the same values.

Rules and legislation alone cannot build this ethical culture that governments should aspire to reach. Individuals with a strong sense of what it means to be an ethical politician must

⁷ Dalton 133.

⁸ Joseph Nye, “The Media and Declining Confidence in Government,” *The Harvard International Journal of Press/Politics* 2.3 (1997): 6-7.

⁹ Nye 6.

¹⁰ Ethics Resource Center, “The Importance of Ethical Culture: Increasing Trust and Driving Down Risks,” *Supplemental Research Brief: 2009 National Business Ethics Survey*, 2009, 1.

¹¹ Denise E. Bellamy, *Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry. Good Government*, Vol. 2. (Toronto: City of Toronto, 2005), 25.

¹² Bellamy 26.

be attracted to government positions.¹³ To attract ethical people, there needs to be clear responsibilities, expectations and accountability to voters.¹⁴ If governments display their commitment to putting the public interest first, they will be more likely to attract public servants who wish to do the same. A government's poor reputation will ultimately lead to a negative public perception, which makes it difficult to attract the right people to the job. Unless ethical individuals are attracted to public service jobs and elected to local government positions, unethical politicians and their values will continue to permeate the political sphere, eventually creating an unethical government culture.

Accountability structures and ethics watchdogs have been present at the federal and provincial levels for decades, and thus it was inevitable that similar structures would trickle down to the municipal level. In response to the conflicts of interest unearthed in the Toronto Computer Leasing Inquiry and other scandals in Ontario municipal politics, more attention has been concentrated on the accountability, transparency, and ethical responsibilities expected of municipal governments. The desire for more accountability in municipal government arises from a decreasing sense of trust and tolerance for our local politicians. Justice Bellamy stressed the importance of intervening for the purposes of shaping the municipal government's culture of ethics, arguing that "since a culture that guides action is inevitable, large organizations like the government of the City of Toronto should not leave the evolution of that culture to chance."¹⁵ To foster both integrity and public trust in political representatives, it is essential that municipal politicians are publicly accountable for their ethical behaviour, as are their provincial and federal counterparts. The question that remains is how best to achieve these ends.

Theories of How to Achieve Ethical Conduct

Politicians and academics have made claims that both reject and support increased structures of accountability and transparency in government. One side of the argument holds that formal ethics regulation and policies are believed to cause a decrease in public trust, a reduction in personal responsibility among politicians, and an increase in cynicism among the general public. The other side posits that relying on trust and personal responsibility is idealistic and does not reflect the reality of politics. Regulations and accountability structures are still necessary to ensure a strong ethical culture, as there will always be those who take advantage of their positions of power and engage in unethical conduct. Elected officials need to be educated, and, if needed, reprimanded for abusing their position as public servants and diminishing the public's trust in government.

There are theoretical claims that accountability structures and integrity watchdogs are not helpful in reducing corruption and unethical behaviour. Lawrence Pratchett criticizes public service ethics, arguing that they actually reduce ethical responsibility in politicians.¹⁶ He believes that if public service ethics are not contextualized properly, they can become ambiguous and vague. Although institutions may provide a framework for ethical behaviour, "the nature of political institutions results in the application of codes and conventions of ethical practice which

¹³ Marcia Sypnowich, "Promoting Ethical Behaviour for Municipal Councils," *Canadian Public Administration* 34.1 (1991): 147.

¹⁴ Sypnowich 147.

¹⁵ Bellamy 25.

¹⁶ Lawrence Pratchett, "The Inherently Unethical Nature of Public Service Ethics," *Ethics in Public Service For the New Millennium*. Ed. Richard A. Chapman (Aldershot: Ashgate Publishing Ltd, 2000), 111.

act as surrogates for true ethical behaviour.”¹⁷ Political institutions provide ethical frameworks, but these norms serve to replace the ethical decision-making process in individuals. When ethical responsibility is reduced to following a set of rules values begin to compete with one another, giving political institutions the mere appearance of having high ethical standards.¹⁸

Other scholars argue that a “culture of distrust”¹⁹ emerges as organizations focus more heavily on accountability and risk aversion. Schillemans, Twist, and Vanhommerig find that “there is an inverse rather than positive relationship between established accountability mechanisms and organizational learning.”²⁰ Organizational goals are displaced out of fear of sanctions and in order for staff to display the norms and values expected of them.²¹ Similarly, Uhr’s call for self-regulation and democratic self-government stands in contrast to those who believe accountability structures will best regulate the ethical conduct of elected officials. He argues for a trust-based perspective on the professional ethics of politicians. Uhr believes that society should be more trusting of politicians and allow them to regulate their own ethics so that there can be a “proactive system of checks and balances.”²² Conflicts of interest and abuse of office do arise; however, being ethical is more than abstaining from breaking codes of conduct or obtaining permission from an ethics commissioner. Although most systems of ethics in politics have oversight committees or commissioners, Uhr argues that a “relationship-centered rather than a rule-centered approach”²³ fosters personal responsibility and moral development.

On a theoretical level it might be more efficient and cost-effective to put the responsibility for moral behaviour directly on political representatives and let the voters decide for themselves what sorts of behaviour they will tolerate. This is not a practical or realistic way to ensure ethical behaviour and encourage public trust in government. According to scholars like Pratchett and Uhr, when rules and accountability structures replace the ethical decision-making process in individuals, politicians will be discouraged from developing their own personal morality. The two authors share a concern that codes of conduct cannot fully capture what it means to be an ethical being. However, Uhr and Pratchett are too quick to dismiss the importance of ethical codes of conduct. Codes and accountability structures can still bolster ethical decision-making in government without taking away personal responsibility. Even though personal responsibility and decision-making is guided by ethical codes, individuals still have to regulate their own ethical behaviour around those codes. By encouraging individuals to seek advice and providing education about the moral standards expected of public servants, accountability structures do not have to be limited to investigative and denunciatory roles that are characteristic of a rule-centered approach to government ethics. A proactive system of self-regulation can be encouraged through ethics education. Moving beyond a strict rule-centered approach and focusing on providing advice and education about how to embody the ethical principles contained within codes of conduct will allow individuals to understand the moral

¹⁷ Pratchett 111-112.

¹⁸ Pratchett 112.

¹⁹ Thomas Schillemans, Mark Van Twist and Iris Vanhommerig, “Innovations in Accountability: Learning Through Interactive, Dynamic, and Citizen-Initiated Forms of Accountability,” *Public Performance & Management Review* 36.3 (2013): 410.

²⁰ Schillemans, Twist & Vanhommerig 410.

²¹ Schillemans, Twist & Vanhommerig 410.

²² John Uhr, “Professional Ethics for Politicians?” *International Public Management Journal* 8.2 (2005): 247.

²³ Uhr 260.

behaviour that an elected government position requires and engage in an open dialogue about integrity without fearing sanctions.

Some theorists claim that trying to instill a culture of ethics in politics through accountability officers and codified policies is inadvisable since the position of power that members of council occupy can lead them to disregard any policies and legislations that attempt to correct their behaviour. Maltez and Herbel respond to the problem of combatting ineradicable unethical behaviour: “One could recognize it as such, anticipate it, and plan measures to fight it without generating the illusion that it will be rooted out.”²⁴ Although the nature of politics provides roadblocks to achieving a strong ethical culture, the absence of integrity structures may further damage the public’s confidence in their elected officials. Regardless of resistance to new laws and policies, the best way to start increasing the public’s trust in their local representatives is to construct and improve accountability structures. Local government will become more transparent to the public and therefore accountable for any conduct that goes against the public interest.

Codes, policies and accountability structures are still necessary steps in achieving an ethical political environment. One of the problems with advocating the trust-based perspective of ethics in government is that there is no way for politicians to seek advice and learn more about what is expected of them, such as what it means to have a conflict of interest. Many municipal councillors, especially in smaller towns and cities, are newcomers to government. There needs to be a way to inspire the right values and knowledge around political conduct. By looking at how ethical responsibility and accountability has been dealt with in Ontario’s municipalities, it become apparent that while many politicians enter city government for the right reasons and take their roles as public servants seriously, there needs to be an additional level of regulation and education.

Accountability Structures in Ontario Municipalities

In 2006, the Ontario Government introduced a new optional government role to the *Municipal Act*: the integrity commissioner. Integrity commissioners were well established in Canada’s federal and provincial government structures, but this role was new to municipalities. Under the *Municipal Act*, municipalities are given the option of filling the integrity commissioner position. This optional role is contained within s.223.3 of the *Act*, which states:

223.3 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an integrity commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

- (a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;

²⁴ Donald J. Maletz and Jerry Herbel, “Beyond Idealism: Democracy and Ethics Reform,” *The American Review of Public Administration* 30.1 (2000): 40.

(b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them²⁵

In September 2014, the Association of Managers, Clerks, and Treasurers of Ontario compiled a list of Ontario municipalities with integrity commissioners.²⁶ As of 2014, 38 municipalities have integrity commissioners. Some are municipal employees, but many individuals serve as integrity commissioners for multiple municipalities and work on a contract basis. In total, Greg Levine, Robert Swayze, and Suzanne Craig serve as integrity commissioners for 22 of the 38 municipalities listed. Integrity commissioner Robert Swayze has part-time contracts with ten of Ontario's municipalities, including Guelph, Mississauga and Oakville. A number of these municipalities only implemented city policy allowing for the hiring of an integrity commissioner over the past four years. This increased presence of integrity commissioners is an emerging trend, likely sparked by the *Municipal Act* or a public call for greater accountability and ethical structures for their elected officials.

The position of integrity commissioner is part of an accountability structure that helps make politicians transparent, ethical, and accountable to the public. There are four accountability officers to regulate ethical conduct in Toronto: the Auditor General, Ombudsman, Integrity Commissioner and Lobbyist Registrar. While their responsibilities in enforcing ethical standards of conduct often intersect, these offices accomplish separate goals. The Auditor General conducts audits to ensure that the City of Toronto is effectively managing financial risk and responsibly expending public funds. The Ombudsman is completely independent of city council and deals with public complaints of both city services and administration.²⁷ Complaints are referred to the Integrity Commissioner when they involve concerns about how councillors conduct themselves. This keeps the role of the Ombudsman from intersecting with that of the Integrity Commissioner. Finally, Toronto's Lobbyist Registrar is responsible for documenting any lobbying activities and regulating the meetings between lobbyists and councillors.²⁸

As their roles frequently overlap when advising and inquiring about conflicts of interest that may arise from the lobbying of council members and other public officials, the Lobbyist Registrar and Integrity Commissioner work together.²⁹ The two offices can perform a joint inquiry if necessary and can share relevant information. Communication must be maintained between the two offices to avoid unnecessary overlap of investigation. Each of the four accountability officers plays an important role in the municipal ethics of Toronto. The accountability system ensures that conduct is examined and wrongdoing is dealt with in an efficient and timely manner. While each office enforces a certain ethical standard of conduct, without an integrity commissioner, codes of conduct that regulate general ethical behaviour of council members might not be adhered to and violations may go unnoticed, unreported or uninvestigated. For example, in a report to council, the Integrity Commissioner reported that a

²⁵ *Municipal Act, 2001*, S.O. 2001, C. 25, s.223.3 (1).

²⁶ AMCTO, *Updated List of integrity commissioners*, AMCTO The Municipal Experts (N.p.), Sept. 8, 2014. Web. Nov. 5, 2014.

²⁷ "Ombudsman Facts," *Office of the Ombudsman – City of Toronto*, Web, Jan. 15, 2015.

²⁸ "Office of the Lobbyist Registrar," *City of Toronto*, Web, Jan. 15, 2015.

²⁹ Linda Gehrke and Janet Leiper, *Memorandum of Understanding Between the Office of the Lobbyist Registrar and the Office of the Integrity Commissioner With Respect to Co-operation and Collaboration in Education and Enforcement* (Toronto: City of Toronto, 2014), 1.

Councillor had violated provision XII (conduct respecting staff) by discrediting the complainant, a staff member of a City of Toronto agency on a public radio program.³⁰ After a meeting with the Integrity Commissioner, the Councillor agreed that her comments were improper and constituted an attack on the personal and professional reputation of the complainant. As per the integrity commissioner's suggestion, the Councillor promptly made a written apology and no further recommendations were made to council.³¹ Without the complaint function of the office that prompts an integrity commissioner to investigate code of conduct violations, there would be no way to review complaints about councillors' conduct and address conduct that falls outside the jurisdictions of the other three accountability offices.

The City of Toronto became the first municipality in Canada to implement an integrity commissioner, appointing David Mullan to the Office of the Integrity Commissioner in 2004. In addition to the updates made to the *Municipal Act*, the legislative assembly of Ontario updated the *City of Toronto Act* stipulating that the city is required to have an Office of the Integrity Commissioner as described in the *Municipal Act*.³² As of 2006, Toronto remains the only municipality in Ontario that is obligated by law to fill the position. Toronto's integrity commissioner has a fixed, non-renewable, five-year term in office.³³ Valerie Jepson began her term in the Office of the Integrity Commissioner in September 2014, taking over from Janet Leiper who was selected by Council in 2009. The commissioner is appointed by and reports back to City Council. While ultimately accountable to City Council, the integrity commissioner is protected from dismissal due to unpopular findings by her fixed term position.

Toronto's integrity commissioner is responsible for encouraging integrity in government by ensuring that Council members and staff uphold the ethical requirements placed on them by provisions in the *Code of Conduct for Members of Council*. The codes of conduct for members of local boards within the city and for members of adjudicative boards are modified versions of the main *Code of Conduct*. Its preamble states:

Improving the quality of public administration and governance can be achieved by encouraging high standards of conduct on the part of all government officials. In particular, the public is entitled to expect the highest standards of conduct from the members that it elects to local government. In turn, adherence to these standards will protect and maintain the City of Toronto's reputation and integrity.³⁴

A municipal integrity commissioner has three general duties: to educate, give advice and investigate and enforce the ethical conduct contained within the *Code of Conduct*. As stated in the *Toronto Municipal Code*, one of the duties of an integrity commissioner is to "provide educational programs to members of Council, local boards (restricted definition), and their staff on issues of ethics and integrity."³⁵ By providing education and advice, the Office of the Integrity Commissioner strengthens the ethical culture of the city and proactively prevents

³⁰ Integrity Commissioner, *Report on Code of Conduct for Members of Council: Councillor Michelle Berardinetti* (Toronto: City of Toronto, 2012), 1.

³¹ Integrity Commissioner, *Report on Code of Conduct for Members of Council*, 4.

³² *City of Toronto Act, 2006*, S.O. 2006, C. 11, Sched. A., s.159 (1).

³³ *Toronto Municipal Code*, 2000 Chapter 3 s.20.

³⁴ *Code of Conduct for Members of Council* (Toronto: City of Toronto, 2008), 2.

³⁵ *Toronto Municipal Code* s. 3-22.

unethical behaviours and violations of the *Code of Conduct*. The commissioner makes presentations to council about emerging ethical issues councillors need to be informed about. For example, during the recent Toronto election, the Office of the Integrity Commissioner put together a 2014 guide to election-related issues and authored a report on the use of social media during an election year. She also briefs new council members on ethical guidelines. The Office has a large record of online resources for members on the City of Toronto website. Here, members of council and local boards can access advice about conflicts of interest, elections, lobbying, staffing, apologies, and gifts. Members can find samples of advice and read up on complaint protocols and other ethics policies.

The second role of an integrity commissioner is to act as an advisor to members of council and staff on their ethical conduct.³⁶ In her report on the Toronto Computer Leasing Inquiry, Justice Bellamy stated that “staff and councillors should be encouraged to discuss ethical issues that arise from time to time with peers, managers, or the integrity commissioner.”³⁷ In Janet Leiper’s annual report to council in 2013, she reports that 45 members asked for her advice on a variety of ethical concerns, commonly through telephone or email. She feels that “members who request advice are identifying concerns and acting on those concerns: this indicates respect for the ethical framework put in place by Council.”³⁸ The advice function of the office helps prevent unethical behaviour and violations of the *Code of Conduct*. Requests for advice are not publicly available, so councillors can openly make inquiries, strengthening the culture of ethics in the municipal government.

Finally, an integrity commissioner investigates and reports to council about violations of the *Code of Conduct*. Provisions regulating gifts and benefits, confidential information, use of city resources, election campaign work, use of influence, conduct at meetings, conduct respecting staff and lobbyists, and discreditable conduct are all contained within the *Code of Conduct*.³⁹ The public or other members of council and staff bring accusations of other members’ *Code of Conduct* violations to the commissioner’s attention through a formal complaint process. The integrity commissioner does not actively seek out ethical misconduct to investigate. The *Municipal Act* specifies that the commissioner may conduct an inquiry if the council, a member of council, or the public makes a request.⁴⁰ The commissioner is entitled to receive access to necessary materials to fully conduct the inquiry. If the inquiry results in a finding of misconduct, a report must be made to council.

City council has the authority to impose two penalties based on the findings in the Commissioner’s report: a verbal reprimand denouncing the conduct or a suspension of pay up to 90 days.⁴¹ In addition, the *Act* outlines the Commissioner’s duties to maintain confidentiality, publish reports, and make references to the authorities in appropriate circumstances. After an investigation has been launched, the integrity commissioner, with the powers given to them in

³⁶ City Manager, *Designation of Certain Officials under the New Statutory Accountability Requirements* (Toronto: City of Toronto, 2007), 6.

³⁷ Bellamy 35.

³⁸ Janet Leiper, *Integrity commissioner annual report 2013* (Toronto: City of Toronto, 2013), 15.

³⁹ *Code of Conduct* 1.

⁴⁰ *Municipal Act* s.223.4.

⁴¹ *Municipal Act* s.223.4.

the *Public Inquiries Act, 2009*, may summon witnesses and have documents relevant to the inquiry made accessible.⁴²

Except in special circumstances, reports from the Integrity Commissioner are only made to council when a violation has been identified.⁴³ In March 2013, *Report on Code of Conduct Complaint: Toronto Star Newspapers Ltd. Against Mayor Rob Ford* was presented to Council only because of “the public nature of the complaint and the novel issues raised by this complaint.”⁴⁴ While no violation was found, the Integrity Commissioner saw fit to resolve the complaint publicly. In response to goals of accountability and transparency in government, as well as the desire to maintain a heightened standard of ethical behaviour in Toronto government, all reports to council are made public.

Positive Impact of Ethics Commissioners

Integrity commissioners play an integral role in municipal government. Not only do they seek to monitor ethical behaviour and code violations, but they also attempt to create a structure of trust and guidance through advising and educating members of council. By focusing on the integrity commissioner’s role as an educator and advisor as opposed to an investigator and rule-enforcer, a municipal integrity commissioner can help realize the proactive, trust-based, relationship-centred approach to political ethics that scholars like Schillemans et al., and Uhr advocate. The advice-seeking function of the office allows politicians to have a conversation about how best to exercise their personal integrity. It goes without saying that the code of conduct cannot cover all aspects of what it means to be an ethical politician, but the code is one helpful way to guide those moral decisions that our political representatives face in the course of their duties. The office in Toronto receives many more informal requests for advice than they have findings of *Code of Conduct* breaches. In a case where the commissioner does find a *Code of Conduct* violation, the report is immediately made available to the public as well as to council. The report’s findings are open to both public debate and political debate by the City Council: “he or she may issue public reports, make recommendations to council, and in general make his or her findings a matter of media and public attention.”⁴⁵ The integrity commissioner is not a watchdog that promotes a culture of mistrust; rather, the role can help shape individual moral development by making open reports, engaging with the public and encouraging members of council to think about the integrity of their actions.

According to Thompson, the purpose of ethics in government is to keep government employees accountable to the public, which in turn strengthens democracy.⁴⁶ Politicians may be ethical individuals in their private lives, but this does not necessarily translate to their public, political lives. Producing ethical behaviour is a result of education, not regulation.⁴⁷ Government ethics should be an educational process that helps maintain democracy by keeping politicians

⁴² *Public Inquiries Act, 2009*, S.O. 2009 s.33-34.

⁴³ *Code of Conduct Complaint Protocol for Members of Council* (City of Toronto, 2012), 6.

⁴⁴ Integrity Commissioner, *Report on Code of Conduct Complaint: Toronto Star Newspapers Ltd. Against Mayor Rob Ford* (Toronto: City of Toronto, 2013), 1.

⁴⁵ Guy W. Giorno and Andrew Pillar, “The Ethical Council: Conflict Codes, Lobbyist Registration and Other Best Practices for Councils and Councillors,” *The Association of Municipalities of Ontario 2005 Annual Conference*, 2005, 7.

⁴⁶ Thompson, Dennis F, “Paradoxes of Government Ethics,” *Public Administration Review* 52.3 (1991): 254.

⁴⁷ Thompson, 255

accountable to the public.⁴⁸ Politicians are held to higher moral standards by the public, and therefore need help to navigate the field of political ethics. A combination of formal and informal accountability structures is important to ensure ethical conduct.

Ethics policy is beneficial because it “sets clear standards of conduct, defining boundaries which separate the acceptable from the unacceptable”, and forces politicians to adhere to standards that represent important ethical values.⁴⁹ These guidelines force individuals to think about the moral content of their conduct by setting boundaries. Rosenson addresses the counterargument that ethics policies may actually reduce the public’s trust of government by giving the impression that their representatives are untrustworthy and needing of regulation.⁵⁰ While ethics laws and policies may be flawed, they are still better than the alternative: no regulation or accountability. If council members choose not to comply with their respective code of conduct, which ultimately represents the ethical behaviour the public desires from their political representatives, there is a mechanism in place that will hold them accountable in a way that maintains transparency.

Studies show that ethics regulation has a positive impact on the ethical decision-making of municipal politicians. Cowell, Downe, and Morgan evaluated the impact on ethics regulation on municipal politicians in England. They found that introducing moral guidelines improved the ethical conduct of their local politicians and reduced instances of serious misconduct.⁵¹ While a “culture of ethical behaviour consistent with the code was already developed, or was in the process of being developed, within some local councils,” ethics regulation has positively impacted conduct.⁵² However, they do note that ethics regulation can be unstable at times and that there was resistance to changes since “councillors who were subject to complaints rarely saw themselves as unethical.”⁵³ Overall, the authors see ethics regulation in local government as beneficial to society.

Outlining and regulating ethical principles for officials to follow is important, but discretion and individual ethical intuitions are also essential for an ethical culture in politics to thrive. Officials should promote the public good by balancing “virtues, principle, and good consequences.”⁵⁴ Informal as well as formal mechanisms should be in place to regulate the ethical conduct of municipal government employees. As Justice Bellamy notes in her Toronto Computer Leasing Inquiry report, “Important messages always need to be repeated, reinforced, taught by example, and explained once more in new contexts.”⁵⁵ Requiring the appointment of an integrity commissioner is a critical step in strengthening a government’s ethical culture.

⁴⁸ Thompson 254-255.

⁴⁹ Beth A. Rosenson, “The costs and benefits of ethics laws.” *International Public Management Journal* 8.2 (2005): 211.

⁵⁰ Rosenson 210.

⁵¹ Richard Cowell, James Downe and Karen Morgan, “Managing Politics? Ethics Regulation and Conflicting Conceptions of ‘Good Conduct,’” *Public Administration Review* 74.1 (2014): 33.

⁵² Cowell Downe and Morgan 34.

⁵³ Cowell Downe and Morgan 36.

⁵⁴ Ryan Urbano, “Public Administration Ethics: James Svava’s Model,” *Journal of Human Values* 20.1 (2014): 11.

⁵⁵ Bellamy 29.

Cases

This section presents two Ontario municipalities, Toronto and London, with varying levels of ethical structures in order to show how the ethical climate of a local government can change once an integrity commissioner, or other accountability structures, are implemented. London was chosen because the city's government has experienced public integrity scandals yet resists hiring an accountability officer. It has a population well over 100,000 citizens and a large city council – London has fifteen elected council members. The city has a thriving business sector and is home to a college and university, making its population diverse and representative of most of Ontario's larger cities. London City Council still functions without an integrity commissioner, despite having approved the appointment of a commissioner in September 2014.⁵⁶ The City of Toronto was the first municipality in Canada to hire an ethics commissioner. It is included in this case study because it set the precedent and serves as the example for integrity commissioners at a local level. Toronto has also been at the centre of one of the largest municipal political scandals in Ontario. The Toronto Computer Leasing Inquiry, which was investigated by Justice Bellamy, contained many recommendations for improving integrity and accountability in Ontario's cities. Major changes to the accountability structures in Toronto as well as other Ontario municipalities occurred as a result of her investigation. By comparing these cities, it becomes clear that accountability structures are an integral tool in shaping the moral behaviour of our political representatives.

London

As with most cities in Ontario, the city of London does not currently employ an integrity commissioner. Some of London's council members oppose the position, with London Councillor Paul Meerbergen reasoning, "We have something called elections. If members of council can't behave themselves, certainly the electorate can take care of that."⁵⁷ This statement is a contrast to Justice Cunningham's argument in his report for the Mississauga Judicial Inquiry. He found that, while not breaking any laws, Mayor Hazel McCallion was in a conflict of interest when she attempted to arrange a land deal between the city and her son's development company.⁵⁸ He believes the public should "not have to depend only on personal ethical standards of elected officials."⁵⁹ Since an integrity commissioner has not held London city council accountable, many scandals have been addressed inadequately, belatedly or have gone unresolved. For instance, the London Free Press reported on a citizen complaint that Council member Joe Swan was involved in a conflict of interest. Swan met with the president of Fanshawe College to persuade him to withdraw his request to expand its campus even though he was on the committee that votes to approve or reject such requests. There is currently no mechanism in place that can investigate and enforce such a citizen complaint about the conduct of their council members.⁶⁰ Their former mayor Joe Fontana has been disgraced, charged with fraud and breach of trust, and was forced to

⁵⁶ Craig Gilbert, "No integrity commissioner for London – Yet," *London Community News*, September 3, 2014.

⁵⁷ Gilbert, "No integrity commissioner for London – Yet."

⁵⁸ J. Douglas Cunningham, *Updating the Ethical Infrastructure*. (Mississauga, Ont.: Mississauga Judicial Inquiry, 2011), 145.

⁵⁹ Cunningham 42.

⁶⁰ Norman DeBono, "Without an integrity commissioner, there's no way of determining if mayoral candidate's actions breached code of conduct," *London Free Press*, December 2, 2014.

step down after being found guilty by the Ontario Superior Court.⁶¹ Introducing an integrity commissioner to the city could increase accountability of public officials, foster public trust in government, and prevent political scandals.

While council recently approved the framework for a future integrity commissioner on September 3, 2014, the position still has not been filled. Though the city's *Code of Conduct* (which is strikingly similar to the City of Toronto's *Code*) has provisions in place for an integrity commissioner, there is no mechanism in place to deal with violations.⁶² At this time, it is the council's responsibility to review alleged breaches and debate until a decision is reached. Without an impartial investigator in place, council alone is left to regulate their behaviour – a system which cannot be relied upon. In September 2014, Councillor Joe Swan publicly objected to Fanshawe College's proposal to expand its downtown campus. A local business owner complained to the city that this is contrary to his duties as outlined in the *Code of Conduct*.⁶³ Without an integrity commissioner this matter has no way to be resolved, as council has no obligation to take the complaint seriously and investigate the alleged breach. Similarly, in March 2014, Mayor Joe Fontana accused another council member of breaching the Code of Conduct by making "disparaging comments about fellow council members."⁶⁴ Without a watchdog in place at city council, such accusations can be made without any follow up or avenues to seek advice.

These two cases in the past year display the serious implications for the level of accountability and transparency in London's City Council. Putting off the hiring of an integrity commissioner and leaving code of conduct breaches to be dealt with internally by council will inevitably result in nepotism and the blaming of avoidance on the part of the guilty parties.

Toronto

In contrast, Toronto has a full-time integrity commissioner who would have been able to investigate such complaints. Toronto's experience with integrity commissioners can be traced to the Toronto Computer Leasing Inquiry conducted by Justice Denise Bellamy of the Ontario Superior Court. Her investigations of conflict of interest, bribery, and embezzlement made clear the need for mandatory minimum standards in ethics regulation and education. In the report, Justice Bellamy described the behaviour of Toronto city councillors as "barely controlled chaos."⁶⁵ She recommended the hiring of a full-time ethics commissioner because it was necessary to supplement the *Code of Conduct* with "a more formal source of ethical guidance, advice, surveillance, and enforcement."⁶⁶ In addition to updated codes of conduct, Bellamy also advocated for gift registries, full-time accountability officers, and the establishment of lobbyist standards. Having integrity commissioners in local government was an important step in achieving integrity, accountability, and transparency.

⁶¹ Dave Chidley, "Joe Fontana resigns as London, Ont., mayor after being found guilty on fraud charges," *National Post*, June 16, 2014.

⁶² *City Council Policy Manual* (City of London, 2013), chapter 5.

⁶³ DeBono, "Without an integrity commissioner, there's no way of determining if mayoral candidate's actions breached code of conduct."

⁶⁴ Mike Donachie, "Coun. Joni Baechler 'muzzled' by London Mayor Joe Fontana?" *Metro News*, March 25, 2014.

⁶⁵ Bellamy 14.

⁶⁶ Bellamy 44.

Justice Bellamy was right to assert that an integrity commissioner would strengthen ethical integrity in Toronto. Since the introduction of an integrity commissioner, the city has continued to foster accountability and transparency. A citizen complaint directed to the integrity commissioner alleged that Rob Ford was in breach of the code of conduct by allowing his junior aids to help coach football during city business hours. Janet Leiper, Toronto's integrity commissioner at the time, investigated the complaint and presented a finding of "no improper use of city resources by the mayor."⁶⁷ This case stands in contrast to citizen complaints about members of council in London. Because the integrity commissioner was in place to investigate allegations of improper conduct, the complaint was investigated and resolved quickly. In this case, no breach was found, so the commissioner did not publicly publish a report to council.

In order for a municipal government's culture to be ethical, values must be instilled in ways that go beyond merely enforcing a set of ethical laws or codes of conduct. A municipal government has a strong culture of ethics when ethical lapses are prevented before they occur, along with fewer allegations of unethical behaviour. Integrating accountability officers who can educate and strengthen the ethical values of municipal governments is one step toward creating a strong ethical culture.

In Toronto, accountability structures such as the integrity commissioner are being used in a more proactive, rather than reactive, manner. Informal contact with the integrity commissioner for advice is now consistently higher than complaints.⁶⁸ In 2005, there were only 24 individual members who utilized the advisory function of the commissioner, and 42 occasions where advice was requested.⁶⁹ The awareness level of the *Code of Conduct* was low, and there were many inconsistencies in the ways the councillors thought about lobbying, gifts and benefits, conflicts of interest, and office expenses.⁷⁰ In his first annual report to council, Mullan noted that "the more frequently Members of Council seek advice, the more justification there is for the claim that they are becoming much more attuned to the demands of the *Code of Conduct* and have developed confidence in the probity of my office."⁷¹ By 2013-2014, Mullan's successor, Janet Leiper, noted an increased demand for both guidance and investigation. She saw a 110% increase in informal complaints and a 46% increase in requests for advice compared to the previous year. In 2014, 45 different members sought advice from Toronto's integrity commissioner and there was a total of 189 instances of advice written or informally provided.⁷² The fact that advice is more commonly being sought by a greater number of members is one indicator that there is an awareness of ethical standards and a desire to strengthen the ethical culture of Toronto City Council amongst the council members

⁶⁷ Daniel Dale, "Rob Ford cleared by integrity commissioner over aides coaching football," *Toronto Star*, August 29, 2014.

⁶⁸ Janet Leiper, *Integrity commissioner annual report 2013-2014* (Toronto: City of Toronto, 2014), 3.

⁶⁹ Mullan, David, *Annual Report of the Integrity Commissioner for the Period September 1, 2004 to December 31, 2005* (Toronto: City of Toronto, 2006), 8.

⁷⁰ Mullan, David, *Interim Report of the Integrity Commissioner* (Toronto: City of Toronto, 2005), 5-8.

⁷¹ Mullan, *Annual Report of the Integrity Commissioner*, 4.

⁷² Leiper, Janet, "Appendix 1: Activities of the Integrity Commissioner July 1, 2013 – June 40, 2014" in *Integrity commissioner annual report 2013-2014* (Toronto: City of Toronto), 3.

Mandatory Integrity Commissioners

The Toronto Computer Leasing Inquiry and the Mississauga Judicial Inquiry reports both contain recommendations on how to promote ethical behaviour in elected officials, specifically calling for more integrity commissioners at the municipal level. Some authors have commented on the impact of these reports and the *Municipal Act*. Bill 130 outlined mandatory and voluntary legislation for municipalities, including mandatory accountability and transparency measures and optional codes of conduct and integrity commissioners. Alcantara, Leone and Spicer's goal was to determine the factors that influenced how municipalities responded to policy changes made by the province.⁷³ Most municipalities met these minimum requirements, but many did not take the extra effort to include the optional measures. Only four of the twelve municipal governments in the sample hired an integrity commissioner and the adoption of a code of conduct was largely dependent on whether there were already codes regulating conduct in effect.⁷⁴ There was minimal public input, concerns about cost, and worries about being under constant scrutiny, resulting in compliance only with mandatory changes. Generally, municipalities tend to adopt minimum requirements of mandatory policies in provincial legislation, which explains why few municipalities in Ontario appointed an integrity commissioner.⁷⁵

Making integrity officers compulsory puts financial burdens on local governments and taxpayers. Councillors in London voiced concern over cost of the office for Toronto, but the cost for smaller cities like London is highly overestimated. As Giorno and Pillar observe, "in 2004, the costs during the first year of operation of the Commissioner's office were estimated to be \$200,000. Obviously many municipalities might opt for alternative, more cost-effective solutions."⁷⁶ The cost for accountability officers in Toronto will inevitably be higher since it is Canada's largest city and economic capital, and contains 44 members of council. Greg Levine, an integrity commissioner for Kitchener, Waterloo, Brant, and Lambton Shores, asserts that for a city similar to London's size and tax base, a more realistic cost is \$20,000 to handle complaints (more to provide advice), not the \$300,000-500,000 that some London councillors were claiming.⁷⁷ Keeping an integrity commissioner on retainer is a small price to pay for accountability, transparency, and integrity in government officials.

Having an office of the integrity commissioner may be difficult to justify for smaller municipalities. In 2014, Caledon paid \$10,000 to keep an integrity commissioner on retainer who had no complaints to investigate.⁷⁸ Council members argue that now that Bill 8 has been passed, there is no need to have both a municipal integrity commissioner and a provincial ombudsman.

⁷³ Christopher Alcantara, Roberto Leone and Zachary Spicer, "Responding to Policy Change from Above: Municipal Accountability and Transparency Regimes in Ontario," *Journal of Canadian Studies/Revue D'études Canadiennes* 46.1 (2012): 114.

⁷⁴ Alcantara, Leone and Spicer 125.

⁷⁵ Alcantara, Leone and Spicer 133.

⁷⁶ Guy W. Giorno and Andrew Pillar, "The Ethical Council: Conflict Codes, Lobbyist Registration and Other Best Practices for Councils and Councillors," *The Association of Municipalities of Ontario 2005 Annual Conference*, 2005, 7.

⁷⁷ Patrick Maloney, "Lawyer incensed by erroneous numbers kicked around by city councillors," *The London Free Press*, September 21, 2012.

⁷⁸ Matthew Strader, "Having and integrity commissioner with no cases creates a headache for Caledon council," *Caledon Enterprise*, December 11, 2014.

Bill 8, which amends the *Ombudsman Act*, extends the Ontario Ombudsman’s jurisdiction to municipalities and grants the Ombudsman power to investigate municipal councils if there is not already an accountability officer in place.⁷⁹

However, the Ontario Ombudsman does not serve as an acceptable replacement for a municipal integrity officer. An integrity commissioner performs his or her duties in an independent manner so that they are free from undue influence of the council. At the same time, a local integrity commissioner can create an ethical environment that encourages individual responsibility and trust. Investigation is only one part of the job, and services such as individual advice and education (which the Ombudsman does not provide) are necessary to foster individual political morality. There needs to be a relationship of trust between the council members and the commissioner in order to maintain a strong culture of ethics in politics. Retaining municipal ethics officers is essential to the task of maintaining transparency and accountability to the public.

Conclusion

Ethical values are the most important values in politics, but municipalities are currently lacking in ethical decision-making practices. We need to not only have ethical guidelines in place, but also a regulatory structure to act as both an overseer and an educator.⁸⁰ As Justice Cunningham asserts, “Even the most well-intentioned municipal code of conduct and legislative enactments governing elected municipal officials will not be effective without a proper enforcement regime.”⁸¹ Since the position plays such a vital role in shaping the city government’s culture of ethics, legislators need to step in and revise the *Municipal Act* legislation to make the appointment of a municipal integrity commissioner mandatory. This is the only way to ensure elected officials are abiding by the procedures and policies implemented to maintain an ethical, transparent, and accountable government.

⁷⁹ *Public Sector and MPP Accountability and Transparency Act*, 2014. S.O. 2014 C.13, schedule 9, s.1-2.

⁸⁰ Shanti Fernando, “Ethics and Good Urban Governance in Toronto: The Bellamy Report and Integrity in Public Service,” *Canadian Public Administration* 50.3 (2007): 437.

⁸¹ Cunningham 179.