



Aboriginal Women's Rights

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March 21, 2015




Introduction / Outline

- Aboriginal women's rights pre-1982
- The equal guarantee of Aboriginal rights to men and women
- Aboriginal women's rights under the *Charter*
- Aboriginal women's right to be free from violence and to adequate state responses to violence



Aboriginal women's rights

- "While changes to the Canadian Constitution have not erased the consequences of state-sponsored sex and race discrimination and colonialism, constitutional changes have gone some distance to identifying these matters and creating legally enforceable rights."
— Joyce Green



Aboriginal women's rights pre-1982

- *Attorney General of Canada v Lavell* [1974] SCR 1349
— *Indian Act* marrying out provisions not discriminatory under the *Canadian Bill of Rights*
- *Sandra Lovelace v Canada*, Comm No R.6/24 (29 December 1977), UN Doc Supp No 40 (A/36/40) (1981)
— *Indian Act* marrying out provisions breached Canada's obligations under Article 27 of the *International Covenant on Civil and Political Rights*, the right to culture




Equal guarantee of Aboriginal rights to men and women

s35(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.



Equal guarantee of Aboriginal rights

- *Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, 13 September 2007:
- "Particular attention shall be paid to the **rights and special needs of indigenous ... women**...in the implementation of this Declaration ... States shall take measures, in conjunction with indigenous peoples, to **ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination**



Aboriginal women's rights under the *Charter*

s15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

s28 Notwithstanding anything in this *Charter*, the rights and freedoms referred to in it are guaranteed equally to male and female persons.



Case law and Legislation

- *Native Women's Association of Canada v Canada* [1994] 3 SCR 627
 - NWAC argued for an equal right to participate in constitutional negotiations under sections 2(b), 15 and 28 of the *Charter*
 - See also the Women's Court of Canada alternative judgment (2007, Canadian Journal of Women and the Law)
- *Mclvor v The Registrar, Indian and Northern Affairs Canada*, 2007 BCSC 827; varied 2009 BCCA 153; leave to appeal denied 2009 CanLII 61383 (SCC)
 - Challenge to *Indian Act* amendments, second generation cut-off
- *Family Homes on Reserves and Matrimonial Interests or Rights Act*, SC 2013, c 20



Aboriginal women's right to be free from violence and to adequate state responses to violence

- FORSAKEN: The Report of the Missing Women Commission of Inquiry
- Inter-American Commission on Human Rights, *Missing and murdered indigenous women in British Columbia, Canada*
- United Nations Committee on the Elimination of Discrimination against Women (CEDAW), *Report of the Inquiry under article 8 of the Optional Protocol*
- *CK v Kenya*, [2013] eKLR



The Honourable Wally T. Oppal, QC, *FORSAKEN: The Report of the Missing Women Commission of Inquiry*

- Released November, 2012
- "The missing and murdered women were forsaken by society at large and then again by the police. The pattern of predatory violence was clear and should have been met with a swift and severe response by accountable and professional institutions, but it was not."



Oppal Report Recommendations

- the best practice for establishing a general and binding duty of non-discrimination is the approach taken by the Government of Alberta in the *Alberta Policing Standards*.
- these standards include the duty to carry out policing duties in accordance with equality rights.



Oppal Report Recommendations

- A barrier police face in investigating missing person reports is that they **do not have ready access to personal information** about the missing person because it is protected through privacy legislation. Some provinces have overcome this via **missing persons legislation**, which provides a statutory basis for police to obtain access quickly, thereby expediting the investigation. **Alberta** has enacted this type of legislation.
- **Recommendation:** that the BC enact missing persons legislation to grant speedy access to personal information of missing persons without unduly infringing on privacy rights, on a priority basis.



Missing Persons Act, SA 2011, c M-18.5

s4(1) ... [I]f there are reasonable grounds to believe that **immediate access to records is necessary to prevent imminent bodily harm to or the death of a missing person**, a police service may serve a written demand on any person requiring the person, within a reasonable period of time stipulated in the demand, to **make available to the police service**, or to provide the police service with **copies of, any of the records** referred to in subsection (2) in respect of the missing person that are in the possession or under the control of the person.



Inter-American Commission on Human Rights, Missing and murdered indigenous women in British Columbia, Canada

- Released January 12, 2015



IACHR report, Key Findings

- Indigenous women and girls in Canada have been murdered or have gone missing at a rate **four times higher than the rate of representation of indigenous women** in the Canadian population which is 4.3%.
- Numbers collected by NWAC: as of March 31, 2010, NWAC has gathered information regarding **582 cases of missing or murdered indigenous women and girls across the country from the past 30 years**.
- British Columbia accounts for 160 cases, 28% of NWAC's total database of 582 and is **followed by Alberta with 93 cases, 16% of the total**.



IACHR report, Key Findings

- The disappearances and murders of indigenous women in Canada are part of a **broader pattern of violence and discrimination against indigenous women in the country**. ...
- Police have **failed to adequately prevent and protect indigenous women and girls** from killings, extreme violence and disappearances, and have **failed to diligently and promptly investigate these acts**.



IACHR report, Key Findings

- Addressing violence against indigenous women is not sufficient unless the **underlying factors of racial and gender discrimination** are also comprehensively addressed. A comprehensive holistic approach applied to violence against indigenous women is required.
- The State must provide a **national coordinated response** to address the social and economic factors that prevent indigenous women from enjoying their social, economic, cultural, civil and political rights
- The State must improve its **consultation mechanisms** with the different parties involved.
- The IACHR strongly supports the creation of a **national-level action plan** or a **nation-wide inquiry** into the issue of missing and murdered indigenous women and girls, in order to better understand and address the problem through integral approaches.



United Nations Committee on the Elimination of Discrimination against Women (CEDAW), Report on Inquiry: Key Findings

- Canada has committed a **"grave violation" of the rights of Aboriginal women** by failing to promptly and thoroughly investigate high levels of violence, disappearances and murders.
- Aboriginal women have experienced serious acts of violence that have significantly affected the **right to life and personal security; the right to physical and mental integrity; and their health**.
- Canada has thereby violated a number of articles of the Convention, including the **obligation to eliminate all forms of discrimination against women**; the right to **equal protection before the law**; the obligation on States to **combat and eliminate harmful stereotypes**; and the right of Aboriginal women to **enjoy adequate living conditions** on and off reserves.


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CEDAW Report, Recommendations

- 38 recommendations for action, including the establishment of an **independent national inquiry** into the cases of missing and murdered Aboriginal women, and the **development of a national plan of action** to address all forms of violence against Aboriginal women.
- Canada disagreed with CEDAW's finding that there have been grave violations of rights, but it accepted 34 of the Committee's recommendations, not including the call for a national inquiry and plan of action. See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656&LangID=E#sthash.EWMQISVH.dpuf>

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C.K.(A CHILD) through Ripples International as her guardian and Next friend) & 11 others v COMMISSIONER OF POLICE/INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE & 3 others,
[2013] eKLR



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Conclusion

- NWAC: <http://www.nwac.ca/>
- FAFIA: <http://www.fafia-afai.org/>
- ABlawg: <http://ablawg.ca/?s=%22aboriginal+women%22>
- Questions / Comments?