

# **Justice System's Response: Violence against Aboriginal Girls**

Submitted to: Honourable Wally Oppal  
Attorney General of British Columbia  
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# JUSTICE SYSTEM'S RESPONSE: VIOLENCE AGAINST ABORIGINAL GIRLS

## I. Introduction

Justice for Girls is a non-profit organization that promotes justice, equality and freedom from violence for teenage girls who live in poverty. Through a program funded by the Law Foundation of British Columbia, we have provided legal advocacy to young women under the age of 19. In addition, one of our important initiatives has been a Criminal Justice Monitoring Program. This program was supported by funding from Status of Women Canada, with a mandate to:

increase street-involved and low-income girls' access to justice in cases where girls are the victims of violence or accused as young offenders. On the basis of our observations in court, research, and ongoing consultation with girls, we are developing recommendations to make the criminal justice system more responsive to low-income and street-involved girls.<sup>2</sup>

Over the course of five years we observed that Aboriginal girls are disproportionately the victims of violent crimes; they are subjected to extreme rates of sexual and physical violence, and constitute a shocking number of murder victims in British Columbia. A recent McCreary Centre report found that: "In general, Aboriginal youth, particularly females, report experiencing more violence compared with their non-Aboriginal peers"<sup>3</sup>.

Justice for Girls has monitored a number of particularly disturbing cases of male violence against Aboriginal teenage girls. Based upon our court observations, individual advocacy with girls, and our literature and case law review, we have a number of recommendations that we would like to propose and discuss with you. Specific case examples have been identified as a result of our court monitoring of the following cases: *R. v. Dezwaan*, *R. v. Tremblay*, *R. v. Ramsay*, *R. v. Kim*, *R. v. Punn*, and the Highway 16 murders<sup>4</sup> (and others).

We have enumerated a number of areas of concern which we wish to discuss with you, including (but not limited to):

- ◆ Sentencing: Hate Motivated Crimes;

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<sup>2</sup> Justice for Girls [www.justiceforgirls.org](http://www.justiceforgirls.org)

<sup>3</sup> McCreary Centre Society, *Raven's Children: Aboriginal Youth Health in B.C.* (2000).

<sup>4</sup> *R. v. Dezwaan* (2003) BCSC, *R. v. Tremblay* (2002) BCSC, *R. v. Ramsay* (2004) BCSC, *R. v. Kim* (2000) BCSC, *R. v. Punn* (2002) BCPC, <http://www.missingnativewomen.ca/native3.html>, [http://www.missingpeople.net/vanished-somewhere\\_along\\_the\\_highway\\_of\\_tears-july\\_14,\\_2002.html](http://www.missingpeople.net/vanished-somewhere_along_the_highway_of_tears-july_14,_2002.html)

- ◆ Justice System Responses;
- ◆ Support & Advocacy for Girls;
- ◆ Breach of International Rights;
- ◆ Systemic Review.

Most importantly, we believe that it is important that you, as the Attorney General, to conduct a systemic review of the justice system's response to violence against Aboriginal girls in British Columbia.

In the background section of this report, we provide you with a contextual overview which informs our analysis of the justice system's response to violence against Aboriginal girls. Our observations and analyses support the conclusion that this violence is perpetrated because of racism and sexism.

## **II. Background:**

*Aboriginal women and their children suffer tremendously as victims in contemporary Canadian society. They are the victims of racism, of sexism and of unconscionable levels of domestic violence. **The justice system has done little to protect them from any of these assaults... We believe the plight of Aboriginal women and their children must be a priority for any changes in the justice system.***<sup>5</sup> [emphasis added]

Chief Justice A.C. Hamilton and Chief Judge C.M. Sinclair (as they then were) have poignantly captured what Justice for Girls has observed with our Court Monitoring Program. In her literature review on Restorative Justice, Aboriginal legal scholar Kelly MacDonald notes that many commentators describe the violence against Aboriginal girls and women as being in epidemic proportions<sup>6</sup>. The Native Women's Association of Canada estimates that 500 Aboriginal women are currently missing or murdered across Canada.<sup>7</sup>

In all of the cases that Justice for Girls monitored, which involved the sexual exploitation and/or sexual assault of **multiple victims**, either most or all of the victims were Aboriginal teenage girls.

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<sup>5</sup> Manitoba, Public Inquiry into the Administration of Aboriginal Justice and Aboriginal Peoples, *report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal Peoples: Vol. 1* (Winnipeg, Manitoba: Queens Printer, 1991) Commissioners Associate Chief Justice A.C. Hamilton and Associate Chief Judge C.M. Sinclair, at 475.

<sup>6</sup> K.A. MacDonald, *Literature Review: Implications of Restorative Justice in Cases of Violence Against Aboriginal Women and Children*. (September 2001) A report prepared for the Aboriginal Women's Action Network (AWAN), at 16.

<sup>7</sup> Native Women's Association of Canada, Sisters in Spirit Campaign.  
<http://www.sistersinspirit.ca/engremember.htm>

To date, there has been little focus on the justice system's response to violence against Aboriginal girls. The literature tends to focus on Aboriginal offenders or adult victims of crime, but very rarely on violence against Aboriginal teenage girls. For example, *Globe and Mail* reporter, Laura Robinson, noted that a recent report on Aboriginal peoples and the justice system did not deal with the law's inability to protect Native women [read girls] from murder<sup>8</sup>. Notably, in Saskatchewan (as well as in British Columbia) there have been numerous murders of Aboriginal girls and women. Robinson stated that "Nowhere did it grapple with the violence aboriginal women [read girls] face at the hands of white men in the larger community"; and a "lack of diligence in crimes against Aboriginal women [read girls] is not uncommon".

Even the available literature we canvassed and utilized in our analysis regarding Aboriginal women and justice is sparse. That lack supports our position that attention needs to be directed toward, and a review conducted of, the justice system's response to violence against Aboriginal girls.

In advancing the issues, concerns, and recommendations contained in this document we were assisted in our analysis by reviewing literature that addressed violence against both Aboriginal women and Aboriginal children. The reality of Aboriginal teenage girls intersects both of these groups. In addition, because of the unique issues and vulnerability of adolescent girls, we have added our own observations. Our analysis concludes that at present Aboriginal girls who are the victims of male violence are poorly served, and often further abused, by the justice system. In the words of Dr. Sally Longstaffe:

The legal system not only fails to protect [Aboriginal] children [read girls], it fails to systematically punish offenders.<sup>9</sup>

A similar sentiment is raised in the literature concerning the justice system's response to Aboriginal women [read girls] who are the victims of crime:

Aboriginal women repeatedly lack confidence in the justice system and its ability to stop violence and they are unwilling to subject themselves to the victim blaming that occurs at different levels of the criminal arena<sup>10</sup>.

An international review of literature sets forth similar conclusions regarding the experiences of Aboriginal women [read girls] in Australia and the United States, with the

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<sup>8</sup> L. Robinson, "The women we've failed" *Globe and Mail*, June 24, 2004 [www.globeandmail.com](http://www.globeandmail.com). Commentator regarding: Saskatchewan, Commission on First Nations and Métis Peoples and Justice Reform, *Legacy of Hope: An Agenda for Change, Vol. 1* (June 21, 2004) [www.justicereformcomm.sk.ca](http://www.justicereformcomm.sk.ca)

<sup>9</sup> B. Hamilton and S. Longstaffe, *A New Justice for Indian Children: A Final Report of the Child Advocacy Project* (Winnipeg: Ministry of the Solicitor General of Canada, 1987) at 21.

<sup>10</sup> J. Koshan, "Sounds of Silence: The Public/Private Dichotomy, Violence and Aboriginal Women" in S. Boyd, ed., *Challenging the Public/Private Divide: Feminism, Law and Public Policy*. (Toronto: University of Toronto Press, 1997) 87.

justice system, as those of Indigenous women and girls in Canada. International commentators cite the racist stereotyping of the Indigenous female and the failure of the justice system to address violence against them<sup>11</sup>. One legal scholar argues that this amounts to a breach of Indigenous women's human rights, as enshrined in international instruments<sup>12</sup>.

Our review of academic articles, judicial inquiries and reports - reinforced by our case monitoring and individual advocacy - underscores the necessity for an inquiry or systemic review of the justice system's response to Aboriginal girls in British Columbia. Justice for Girls has grave concerns regarding what we perceive to be the justice system's all too often inadequate, inappropriate, and sometimes callous response. An inquiry would canvass strengths and weaknesses in the criminal justice system's response to violence against Aboriginal girls. By developing recommendations it would thereby provide a blueprint for representatives in the justice system to better serve and meet the needs of vulnerable Aboriginal girls.

In the next section we enumerate some specific examples, illustrations and concerns about the criminal justice system's response to violence against Aboriginal girls.

### **III. Systemic Issues Identified by Justice for Girls:**

Following are some specific examples and areas of concern regarding the justice system's response to the endemic violence against Aboriginal girls in British Columbia. As mentioned in our introduction, these issues and concerns are drawn from our review of literature and case law, as well as our experiences advocating with and for Aboriginal girls and monitoring cases of violence against them.

#### ***1) Hate Motivated Crime – s. 718.2(a)(I) of the Criminal Code:***

The *Criminal Code* was amended to include sentencing principles which provide a guide for the judiciary to determine whether a convicted persons' sentence should be aggravated because their crime was motivated by hate, prejudice or bias. In particular, section 718.2(a)(i) states that the following should be taken into consideration when sentencing:

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<sup>11</sup> See for example: P.E. Andrews, "Globalization, Human Rights and Critical Race Feminism: Voices from the Margins" 3 *The Journal of Gender, Race and Justice* (2000) 373; P.E. Andrews, "Violence Against Aboriginal Women in Australia: Possibilities for Redress Within the International Human Rights Framework" (1997) 60 *Albany Law Review* 917; A. Cossins, "Saints, Sluts and Sexual Assault: Rethinking the Relationship Between Sex, Race and Gender" (2003) 12(1) *Social and Legal Studies* 77; K. Mack, "An Australian Perspective on Feminism, Race, and Evidence" (1999) 28 *Southwestern University Law Review* 367.

<sup>12</sup> P.E. Andrews, *Ibid*.

Evidence that the offence was motivated by bias, prejudice or hate based on **race**, national or ethnic origin, language, colour, religion, **sex, age**, mental or physical disability, sexual orientation, or any other similar factor. [*emphasis added*]

Despite the fact that section s. 718.2(a)(i) specifically enumerates race, age and gender, case law (to date) does not reflect an advancement in the consideration of these factors in sentencing. We have observed in many of the cases we have monitored, that bias, prejudice, and/or hate appear to be strong motivators for the commission of violent crimes against Aboriginal girls. Unfortunately however, s. 718.2 (a)(i) has not been put forward as an aggravating factor in the sentencing of any of the male perpetrators convicted of violent crimes against Aboriginal girls. Alarming, this is also true in cases where perpetrators have assaulted multiple victims who are Aboriginal teenage girls.

The marginalized status of Aboriginal girls and women is discussed in the report of the *Aboriginal Justice Inquiry* of Manitoba. Chief Justice A.C. Hamilton and Chief Judge C.M. Sinclair (as they then were) draw a correlation between the contemporary image of Aboriginal women (read girls) and the violence perpetrated against them:

The demeaning image of Aboriginal women is rampant in North American culture. School textbooks have portrayed Aboriginal woman as ill-treated at the hands of Aboriginal men, almost a “beast of burden”. These images are more than symbolic – **they have helped to facilitate the physical and sexual abuse of Aboriginal women in contemporary society.**<sup>13</sup> [*emphasis added*]

Their observations were informed by community consultations during the Inquiry, as well as by the scholarly work of Métis academic, Professor Emma LaRoque:

The portrayal of the squaw is one of the most degraded, most despised and most dehumanized anywhere in the world... Such grotesque dehumanization has rendered all Native women and girls vulnerable to gross physical, psychological and sexual violence... **I believe there is a direct relationship between these horrible racist/sexist stereotypes and violence against Native women and girls.**<sup>14</sup> [*emphasis added*]

Similarly, a recent report on sexually exploited Aboriginal children and youth draws upon literature regarding Aboriginal women (read girls) and cites the following findings:

In British Columbia, community consultations reveal that Aboriginal women [read girls] are disproportionately targets of assault. **Racism appears to**

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<sup>13</sup> Hamilton and Sinclair, *supra* note 6, at 479.

<sup>14</sup> Emma LaRoque, as cited in AJI at 479. (written presentation to Aboriginal Justice Inquiry Hearings, 5 February 1990). See also: K. Absolon, E.I. Herbert, and K.A. MacDonald, *Aboriginal Women and Treaties Project* (Victoria, British Columbia: Ministry of Women’s Equality, 1996).

**motivate these attacks; patterns of assaults in some areas suggest that victims are selected on the basis of race alone.**<sup>15</sup> [*emphasis added*]

As well, the Canadian Panel on Violence Against Women, noted:

**Racism is a major contributing factor in the continuing violence, oppression and systemic abuse that confronts Aboriginal women in Canadian society today...**There are no available statistics on racially motivated assaults on Aboriginal women (read girls); however, recent cases demonstrate the magnitude of the problem.<sup>16</sup> [*emphasis added*]

We concur with the above commentators. It has also been our observation, in the cases we have monitored, that racism and sexism has motivated crimes against Aboriginal girls. Furthermore, Aboriginal girls are targeted by violent men because of their vulnerability including the vulnerability created by the non-response of the police and courts to violence against them. Included in this non-response is the failure of actors in the justice system to bring hate motivation forward in court.

Legal scholars in the United States have thoroughly highlighted the epidemic of gender-based violence<sup>17</sup>. In particular, they emphasize the importance of understanding and ensuring that there is an intersecting analysis of other enumerated grounds [such as those found in s. 718.2(a)(i) – i.e. race, gender, and age]:

There is an important intersection between gender and the other typically enumerated bias categories that is not presently given adequate consideration... The mere fact that a bias offender chooses rape as the criminal means to express his bigotry should not preclude bias crime categorization. Bias crimes should liberally allow for the possibility that multiple categories can be implicated at the same time, thereby recognizing the intersecting identities of some victims.<sup>18</sup>

These considerations must be at the forefront when the courts are addressing crimes of violence against Aboriginal girls.

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<sup>15</sup> Province of British Columbia and Justice Canada. 1995. *Community Consultation on Prostitution in British Columbia*. Victoria: Government of British Columbia. As cited in: C. Kingsley, M. Mark, *Sacred Lives: Canadian Aboriginal Children and Youth Speak out About Sexual Exploitation* (Save the Children, Canada: 2001).

<sup>16</sup> Canadian Panel on Violence Against Women, *Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women*. (Ottawa: Ministry of Supply and Services Canada, 1996) at 159.

<sup>17</sup> S. Bennett Weisburd, B. Levin, “‘On the Basis of Sex’: Recognizing Gender-Based Bias Crimes” Spring (1994) *Stanford Law and Policy Review* 21at 27.

<sup>18</sup> *Ibid.* at 39.

In our review of *Hansards*, former Minister of Justice Allan Rock provided clarity as to the rationale for the inclusion of s.718.2(a)(i) in the *Criminal Code*. He stated that the provision was to be seen as one aspect of sentencing and should not be confused with requiring a hate crime conviction. He noted that where it has been proven that the person committing the crime was **motivated** by hate, bias or prejudice that **must** be taken into account as an aggravating factor at sentencing<sup>19</sup>. He also underscored that this provision reflects that when crimes are motivated by hate, bias or prejudice they affect entire groups and:

It provides an opportunity for Parliament to make a statement that that kind of attack will not be tolerated and that we stand together in condemning hate motivated crime.<sup>20</sup>

The analysis put forward by the judiciary and academic commentators reinforces and mirrors our court observations – that violence against Aboriginal girls is overwhelmingly motivated by bias, hate, and/or prejudice.

In light of the former Minister of Justice’s statement that hate will not be tolerated, we are disturbed that cases of violence against Aboriginal girls have not been viewed in light of their hate motivated bias.

*i) Role of Crown:*

It is our observation that Crown does not advance Section 718.2(a)(i), in cases of violence against Aboriginal girls, despite the Attorney General’s direction that:

Crown Counsel’s role is to act on behalf of and in the public interest... When the evidence establishes that there is a substantial likelihood of conviction, and that **an offence was motivated by bias, prejudice or hate** based on race, national or ethnic origin, language, colour, religion, sex, age, mental, or physical disability, sexual orientation, or any other similar factor, it is generally in the public interest to vigorously prosecute the offence. **It is also in the public interest to seek to have the court take into consideration that motive as an aggravating factor in the sentencing of the accused.**<sup>21</sup> [*emphasis added*]

Justice for Girls is concerned that this important sentencing principle is not used by Crown in cases of violence against Aboriginal girls.

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<sup>19</sup> Minister of Justice Allan Rock, *Hansard Debates: Bill C-41 – An Act to Amend the Criminal Code*, June 15, 1995.

<sup>20</sup> *Ibid.*

<sup>21</sup> British Columbia, Attorney General, *End Hate Crime: Hate/Bias Crime Policy Guide* (1997) at 11.

*ii) Role of Police:*

*The Vancouver Police have a system in place to identify reports of crimes which have overtones of bias. Reports involve bias on the basis of gender, race, religion and sexual orientation. A review of the reports for 1995 in which women were the victims of bias showed that **the majority were racial in origin** and involved threats of, or actual violence, racial slurs or mischief.<sup>22</sup> [emphasis added]*

Police are at the front-line of the criminal justice system. With the recent retirements of many municipal police officers, it is imperative that younger officers are adequately trained to identify and collate whether crimes are motivated by hate, bias, or prejudice. The former Hate Crime Team made significant advancements in this area. Since then, however, a new system of reporting has been implemented and thus training initiatives must play “catch up” to ensure that officers know how to report whether there are elements of hate, bias or prejudice in the commission of an offence.

Both existing officers, and recruits, should receive training at the Justice Institute or during RCMP training, as well as in-service training. At a broader theoretical level this training should provide a basic education in how social inequality leads to and is the context for violence against women and girls. Police training must also include education about how racism and sexism affects and specifically manifests in crimes against women and girls.

A significant issue, identified by the former Hate Crime Team, is that CPIC does not identify hate crime convictions. To our knowledge, this concern has not been remedied, and must be:

The fact that hate crime convictions are not identifiable on an offender’s criminal record on the Canadian Police Information System (“CPIC”) is of specific concern... Thus, if the offender is subsequently sentenced for a further hate crime in another jurisdiction, unless the police, Crown Counsel, or court are aware that a previous sentence was imposed for a hate crime, this specific information would not be available for sentencing.<sup>23</sup>

*iii) Case examples:*

Justice for Girls is concerned that s.718.2(a)(i) was not advanced in cases where we observed that the section seemed especially applicable. For example, in the sentencing of Judge Ramsay, we note that in the facts (as presented by the media), Ramsay referred to the girls as ‘worthless’ and as ‘whores’. All of the victims were under 16 (age), Aboriginal (race), and girls (gender). It is certainly arguable that this pattern indicates the

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<sup>22</sup> British Columbia, Attorney General, *Towards Justice for Women: Annual Status Report (Jan.-Dec. 1995)*. (Victoria: Ministry of Women’s Equality, 1996) at 21.

<sup>23</sup> C. MacMillan, M. Claridge, and R. McKenna, “Criminal Proceedings as a Response to Hate: The British Columbia Experience” (2002) 15-45 *Criminal Law Quarterly* 419 at 451.

assaults were motivated by bias based on gender, and/or race and/or age; yet the Crown did not advance this argument at sentencing.

In addition, Justice for Girls monitored the case against Martin Tremblay, a sex offender who was convicted on 5 charges of sexual assault for raping and videotaping 5 Aboriginal girls who were 13-15 years of age. Tremblay was sentenced to 3 years in custody, and 18 months probation. The Crown did not raise hate, bias, or prejudice as motivating factors pursuant to s. 718.2(a)(i), despite the fact that the victims were all young, Aboriginal, and girls.

We are disappointed with the sentence but not surprised by it because the courts rarely treat violence against Aboriginal teenage girls seriously. What is shocking, however, is the degree of racism and sexism that is tolerated in the defence of men who commit sexual offences against Aboriginal girls.<sup>24</sup>

*iv) Summary:*

*Just as with all bias offenders, the victim's perceived second-class status legitimates the violence. By recognizing the group-based animosity underlying these victimizations, we not only decry the violence but also take the first step to confronting the underlying attitude that allows the violence to occur.*<sup>25</sup>

Justice for Girls acknowledges that the judiciary's application of s. 718.2(a)(i) has not been uniform to date and that there are some significant challenges for the Crown in advancing proof of hate, bias, or prejudice as motivators for criminal acts. Regardless, **we believe that it is imperative for Crown to advance this sentencing principle.** As articulated by former Minister of Justice Allan Rock, these are crimes not only against individuals but are affronts to marginalized groups and Canadian society - most notably Aboriginal peoples.

Aboriginal girls suffer disproportionately from violent crimes. Our experience, coupled with the literature reviewed (in particular the Manitoba Aboriginal Justice Inquiry), clearly shows that much of this violence is perpetrated because of racism and sexism. Chief Justice Hamilton and Chief Judge Murray Sinclair found this to be the case in the tragic murder of Helen Betty Osbourne, who was only 19 when she was murdered. Young women and girls are especially vulnerable because of their age<sup>26</sup>.

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<sup>24</sup> Justice for Girls, press release: *BC Court Lenient on Man Who Sexually Assaulted Numerous Unconscious Teenage Girls*, December 4, 2002.

<sup>25</sup> *Supra*, note 16, at 41.

<sup>26</sup> Mr. Justices C.M. Sinclair and A.C. Hamilton stated in their *Report, supra* note 6 - that the murder of Helen Betty Osbourne was a racist and sexist act (Vol. 2 at 52); and affirmed that demeaning stereotypes and images of Aboriginal women have helped facilitate the physical and sexual abuse of Aboriginal women [and girls] in contemporary society (Vol. 1 at 479).

Women [read girls] in our society live under a constant threat of violence. The death of Betty Osbourne was a brutal expression of that violence. She fell victim to vicious stereotypes born of ignorance and aggression when she was picked up by four drunken men looking for sex. Her attackers seemed to be operating on the assumption that Aboriginal women were promiscuous and open to enticement through alcohol or violence. It is evident that the men who abducted Osbourne believed that young Aboriginal women [read girls] were objects with no human value beyond sexual gratification...

**There is one fundamental fact: her murder was a racist and sexist act. Betty Osbourne would be alive today had she not been an Aboriginal woman [read girl].<sup>27</sup> (*emphasis added*)**

The literature canvassed supports our observations, and supports the utmost importance of looking at the intersection of bias and hate based on race, gender, and age when speaking to sentence in these cases.

## 2) *R. v. Ramsay:*

The case against former provincial court judge Ramsay highlighted for Justice for Girls some additional concerns pertaining to the justice system. We have two further issues to canvass with you:

### *i) Removal from Bench?*

As set out in our correspondence to the previous Attorney General Hon. Geoff Plant regarding this issue<sup>28</sup>, the RCMP began their investigation into Judge Ramsay's assaults after a complaint in August, 1999<sup>29</sup>. Judge Ramsey was not removed from his duties on the Bench until the summer of 2002. According to media accounts, the crimes committed by Ramsay continued up until 2001<sup>30</sup>; three years after the investigation began. Justice for Girls, and the public at large, must be advised as to why it took so long to remove Judge Ramsay from his public responsibilities on the Bench.

### *ii) Review of Judge Ramsay's Court Decisions:*

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<sup>27</sup> Hamilton and Sinclair, *supra* note 6, vol. 2, at 52.

<sup>28</sup> Letter from Justice for Girls to the Attorney General, May 19, 2004

<sup>29</sup> K. Kwan, "Judge probe still open, police say" *Prince George Citizen*, May 6, 2004 [www.princegeorgecitizen.com](http://www.princegeorgecitizen.com).

<sup>30</sup> K. Kwan, "Judges rulings could face review," *Prince George Citizen*, May 5, 2004 [www.princegeorgecitizen.com](http://www.princegeorgecitizen.com); J. Armstrong, "Former B.C. judge admits to sex assaults against 4 teen girls", *National Post*, May 4, 2004 [www.globeandmail.com](http://www.globeandmail.com).

As set out in our earlier correspondence with the Ministry of Attorney General, Hon. Geoff Plant was quoted in the *Prince George Citizen*<sup>31</sup> stating that it “might be necessary” to review Judge Ramsay’s decisions to determine whether the justice system was compromised. We believe that it is essential that a review occur. We have been advised by sources in Prince George that concern has been raised regarding Judge Ramsay’s deliberations, particularly in cases held in remote Aboriginal communities which involved sexual abuse and violence against Aboriginal girls. While our knowledge is based on hearsay, it raises the spectre of impropriety and questions about the proper administration of justice. We ask that an independent fact-finder be appointed to investigate and conduct a critical race, gender, and legal analysis of Ramsay’s decisions.

### 3) *Justice System*

Despite the fact that there is such horrific and wide-spread violence committed against Aboriginal girls, there has been never been a systemic review/inquiry or report on the justice systems’ response to violence against Aboriginal girls in B.C. (or elsewhere). In this document, we have drawn from literature that speaks to the experience of Aboriginal women and children (since there is very little literature on the experiences of Aboriginal teenage girls) as well as our knowledge and experience working with Aboriginal girls.

#### *i) Crown:*

*One of the most stressful circumstances for any victim witness is having to face the accused during the trial process. Through the work of support people and attentive justice system workers, this stress can be lessened by ensuring, for example, the child victim witness is not left unaccompanied in the presence of the accused. Make every effort not to have the child witness in the same waiting room as the accused. Consider an application for use of the screen in the courtroom in order to shield the child from having to look at the accused.*<sup>32</sup>

It is Justice for Girls’ observation that screens and other protective measures for child witnesses (pursuant to section 486 of the *Criminal Code*) are rarely, if ever, requested by Crown or ordered by the judiciary. In our advocacy work, we have often been told by Crown that the teenage girl “did not ask for a screen”. We believe it is imperative that Crown counsel becomes proactive in utilizing s.486 measures<sup>33</sup>.

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<sup>31</sup> K. Kwan, *Ibid.*

<sup>32</sup> British Columbia, Attorney General: Victim Services Division, *Working with Aboriginal Child Victim Witnesses - Part One: Guidelines* (Victoria: Attorney General, 1996) at 14. Reports prepared by Sheila Clark and Associates.

<sup>33</sup> For example, pursuant to s. 486 (1) the public can be excluded from the courtroom, pursuant to section 486 (2.1) victims of a sexual offence who are under 18 can give testimony from behind a screen or by closed circuit television, and pursuant to s. 486(1.2) a support person can be asked for a child 13 and under.

As noted by consultant Andy Wachtel, in his report on court design:

The SCREEN is the most widely used of these alternate approaches. Even so, **its use is very uneven, depending on the views of sitting judges, the attitudes and experiences of particular Crown counsel, and the availability and suitability of equipment.**<sup>34</sup> [*emphasis added*]

While advocating for the use of section 486 measures in cases of violence against homeless teenage girls (many of whom are Aboriginal), Justice for Girls has been advised by Crown counsel that these measures are meant for “children”. It would seem that some Crown counsel do not consider these particularly vulnerable persons to be children, and this appears to be especially so if the victim has been street-involved. We recommend that justice personnel be educated regarding the trauma for young women who are testifying in cases of violence against them especially when they are dealing with the compounding effects of repeated victimization due to extreme poverty (homelessness). For those who are most marginalized, Aboriginal girls, this experience is arguably even more traumatic.

It is the hope of Justice for Girls, that education of the Judiciary, Crown and others in the justice system would result in an increased acceptance and use of less intrusive measures in court; and thus increased access to justice for Aboriginal teenage girls. Justice for Girls believes that protective procedures such as removing girls from the courtroom to testify should be done **proactively** in every case that involves sexual violence against teenage girls and especially against severely marginalized teenage girls. Crown counsel must proactively inform young women about their option to request protective procedures and must offer a **full range** of protective measures, including providing testimony outside of the courtroom. It has been our observation that the most common protective procedure is to employ a screen. Screens principally serve as a symbolic rather than actual barrier between young women and accused. **Young women must have the opportunity to testify outside of the courtroom.**

*ii) Police:*

It is the perception of the Aboriginal community that law enforcement agencies do not adequately respond to violent crimes against Aboriginal girls. This perception is articulated in many reports and inquiries, and is substantiated by our observations. For example, in Northern British Columbia:

The entire community of Prince George – especially the women – is on edge, wondering what happened to seven women [five were teenage girls] who disappeared along Highway 16, now dubbed the “Highway of Tears”. All but one of the victims is Aboriginal. Interestingly, the only case that prompted enthusiastic police investigation, assisted by significant media coverage, was the

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<sup>34</sup> British Columbia, Attorney General, *Children and Other Vulnerable Witnesses: A Guidebook on Court Design*. (March 1997) A report prepared by Andy Wachtel, at 36.

disappearance of Nicole Hoare, a non-Native woman... Native people in the area believe the same kind of efforts should be directed at finding the other victims.<sup>35</sup>

In our monitoring of *R. v. Kim*, a man who was convicted on 27 counts of violent offences against nine teenage girls, a number of serious concerns were raised regarding police treatment of Frank Kim's victims. These girls ranged in age from 12-15 years old and six of the nine victims were Aboriginal girls. We are concerned about the following police actions/inactions, that we became aware of during our monitoring of Kim's trial and subsequent dangerous offender hearing:

- Kim was pulled over with a group of teenage girls in his car and the police failed to question him about this suspicious situation. Instead they focused on a seatbelt infraction.
- The police failed to treat Kim as suspicious when one of his victims tried to escape from Kim by taking his car. Despite the fact that there was an obvious desire of this Aboriginal young woman to get away from Kim, the police responded to her as a criminal.
- A young woman who was raped by Kim reported the rape to police and yet the police failed to question Kim even though the young woman told police his identity and address.
- The police released a 12-year old Aboriginal girl, a victim of Frank Kim, onto the street in the early hours of the morning after interrogating her about Kim's abuse. She hitchhiked back to Vancouver from Richmond.

In our work as advocates, we have been alerted to situations where Aboriginal girls have been disbelieved, treated abusively, or criminalized by the police in response to their reports of male violence. Their particular life circumstances, age, race, and gender leave them especially vulnerable to abuse. Police must be trained to respond to violence against girls pursuant to the values as set out in their code of conduct<sup>36</sup>. Moreover, the actions of the police in the case *R. v. Kim* must be examined as we believe the police, had they acted earlier and without bias, may have prevented a number of attacks on young women.

*iii) Bail Conditions:*

*...men awaiting trial for violence against girls have no minimum restrictions placed on them. We have seen cases in which men charged with sexual assault of girls have not even had no contact with children conditions on their bail orders.*<sup>37</sup>

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<sup>35</sup> P. Barnsley, "Disinterested authorities big part of the problem: Aboriginal women at risk" *Windspeaker*, Dec. 2002, 2:8 at 3.

<sup>36</sup> In particular: *Code of Professional Conduct Regulations* B.C. Reg. 205/98 s. 3(b): [all police officers] are committed to treating all persons or classes of persons equally, regardless of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status...

<sup>37</sup> Justice for Girls [www.justiceforgirls.org](http://www.justiceforgirls.org)

First and foremost we believe that men who have criminal histories of violence against women and girls should be removed from the community when they are charged with subsequent similar offences. This is especially critical when the victims are extremely marginalized and the violence is severe.

We question why Robert Raymond Dezwaan, for example, was released on bail after being charged with sexual assault with a weapon and confinement when he had been convicted of a similar crime of violence against a woman, and had a number of other charges related to violence against women.

While on bail for the crimes described above Dezwaan murdered a 16 year old Aboriginal girl, Cherish Oppenheim. When Mr. Dezwaan was stopped by the RCMP just hours before he murdered Cherish Oppenheim, he was found to have both duct tape and a knife (8-10" blade "kitchen knife") in his van. At the time Mr. Dezwaan was under bail conditions for a recent sexual assault **in which he used duct tape and a knife**. His conditions included the following:

- ◆ Reside at 1265 Rutland Road, North, in Kelowna;
- ◆ Prohibited from having in his possession any weapons as that phrase is defined by Section 515.<sup>38</sup>

Despite his possession of a knife and duct tape, and despite his reside condition (he told the police he was moving, a contravention of reside condition), Mr. Dezwaan was not arrested for breaching his bail. Constable Olsen, who pulled Mr. Dezwaan over the evening of Ms. Oppenheim's murder, stated at the preliminary inquiry that he knew Mr. Dezwaan was under conditions "and not to be in possession of explosives, ammunition, restricted weapons, prohibited weapons"<sup>39</sup>. He further clarified that he was told by Telecommunications that there was nothing in the conditions regarding a knife and that the conditions mostly had to do with prohibited weapons, restricted weapons and explosives. This interpretation would appear to be correct as the knife described would not fall within the definition of 'weapon' as enumerated in s. 515(4.1)(d):

...firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition, prohibited ammunition or an explosive substance.

At Dezwaan's prior bail hearing, Crown counsel had incorrectly asked for "a weapons prohibition pursuant to section 514". If they had been more specific, regarding prohibition against a knife, a prohibition pursuant to section 515(4.2)(b) could have been requested and knives (of all descriptions) specifically prohibited.

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<sup>38</sup> *R. v. Dezwaan*, Proceedings at Bail Hearing, Kelowna B.C. 15 August 2001.

<sup>39</sup> *R. v. Dezwaan*, Excerpt from proceedings at Preliminary Inquiry: Testimony of Constable R. Olsen, 7 May 2002.

Mr. Dezwaan was sentenced on February 19, 2003 to life imprisonment without eligibility for parole for 15 years. He was also given a lifetime prohibition against having firearms pursuant to section 109 of the *Criminal Code*. His sentence makes no reference to a prohibition against knives.

Also disturbing is the fact that the Crown, subsequent to Dezwaan's sentencing for the murder of Cherish Oppenheim, stayed unrelated charges of sexual assault and confinement. We pursued this matter with Crown but were denied explanation. We ask that you review this decision by Crown.

#### **4) *Support & Advocacy for Aboriginal Girls:***

*The victimization of Aboriginal women has not only manifested in their abuse, but also in the manner in which Aboriginal female victims are treated. Women victims often suffer unsympathetic treatment from those who should be there to help.*<sup>40</sup>

Report after report has found that many Aboriginal women [read girls] believe that they experience racism in accessing victim services and that services are inadequate to meet their specific needs<sup>41</sup>. It has been our observation that on occasion girls are assigned victim services workers but have not met them prior to the day of the trial or preliminary hearing. In addition, we have observed cases in which the Crown has not informed young women what support is available to them.

In a report prepared for the Victim Services Division of British Columbia, a researcher found that victims were perceived by the justice system as 'deserving' or 'undeserving'. She noted that women from diverse groups, especially First Nations women [read girls] and women of color were often relegated to the 'undeserving' category<sup>42</sup>:

Women of colour and Aboriginal women [read girls] don't get the special care and attention that they need because they are more frequently cycled through the system. It is just treated as routine.<sup>43</sup>

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<sup>40</sup> Hamilton and Sinclair, *supra* note 6, vol. 1 at 482.

<sup>41</sup> Absolon, *et al*, *supra*, note 13; British Columbia, Ministry of the Attorney General, *Sexual Assault Policy: Aboriginal Consultation Report* (October, 1995); Canadian Panel on Violence, *supra*, note 15; E. LaRoque, *supra*, note 13; MacDonald, *Literature Review*, *supra*, note 6; Manitoba, *supra*, note 5; Save the Children, *supra*, note 14.

<sup>42</sup> M. Russell, *Measures of Empowerment: for Women Who are Victims of Violence Who Use the Justice System* (December, 2001) at 39. A report prepared for Victim Services Division, B.C. Ministry of Public Safety and Solicitor General.

<sup>43</sup> *Ibid.* at 39.

An Attorney-General's consultative report with Aboriginal victims provides a concise summary of the varying concerns that Aboriginal women [read girls] have experienced with the justice system:

- Racism;
- Poor lines of communication between justice system personnel and Aboriginal women;
- The justice systems inability to respond to the needs of Aboriginal people with fetal alcohol syndrome/fetal alcohol effects;
- Limited understanding of how the justice system works;
- Lack of information and support for aboriginal sexual assault victims;
- Fear.<sup>44</sup>

In addition, the authors made a recommendation that is mirrored in numerous other reports<sup>45</sup>:

Aboriginal women identified the need for inclusion in policy and research. Specifically, Aboriginal women need to be included in all levels of intersectoral and interministerial policy making, as well as long-term research in the area of violence against Aboriginal women [read girls].<sup>46</sup>

A recent report, prepared by the Pacific Association of First Nations Women et al, captures sentiments and observations shared by Justice for Girls. Their report underscores that the recommendations provided in many, many, government reports need to be implemented as soon as possible on behalf of Aboriginal women and girls:

The PAFNW, BCW's and BCASVACP, along with many Aboriginal and women's organizations and government departments have articulated concerns regarding the extent and magnitude of violence against Aboriginal women, the lack of adequate responses to the violence, and the gaps in related services, programs and policies, numerous times over the years. A number of provincial and federal studies have documented these concerns and made recommendations for ensuring that Aboriginal women [read girls] have access to services and opportunities for protection from violence... **Despite this little progress has been realized.** The recent closures of government offices and reductions to anti-violence, health and related social services in BC compound the urgency of these concerns.<sup>47</sup> [emphasis added]

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<sup>44</sup> Sexual Assault Policy, *supra*, note 42.

<sup>45</sup> For example: Canadian Panel on Violence, *supra*, note 15; E. LaRoque, *supra*, note 13; MacDonald, *Literature Review*, *supra*, note 6; Save the Children, *supra*, note 14.

<sup>46</sup> Pacific Association of First Nations Women, B.C. Women's Hospital & Health Center, B.C. Association of Specialized Victim Assistance and Counselling Programs, *The "Start of Something Powerful": Strategizing for Safer Communities for B.C. Aboriginal Women* (October, 2003) at 12.

<sup>47</sup> *Ibid.* at 4.

In June of this year, the Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform released their report and recommended that:

Rec. 3.12: This Commission recommends that the governments of Canada and Saskatchewan expand victim services in the province.<sup>48</sup>

The report reiterates the findings of many earlier reports, namely that more services are required to attend to the specific cultural needs of Aboriginal girls and women. Justice for Girls believes that Aboriginal girls must have access to support and advocacy in order to “access justice” in cases of male violence. It is critical that advocacy and support initiatives are lead by Aboriginal women’s groups. Aboriginal Women’s organizations must be supported and funded by the Ministry of Attorney General to define and provide such services to teenage girls.

### 5) *International Rights:*

American legal scholar Penelope Andrews argues that the epidemic violence, to which Aboriginal women [read girls] in Australia are subjected, is a violation of their human rights as enshrined in international instruments. In particular she argues that the epidemic of violence violates rights, as set out in the *Convention to End the Elimination of Discrimination Against Women (CEDAW)*<sup>49</sup>.

In Canada there were two reports submitted in 2003, to the United Nations CEDAW Committee: one from the B.C. CEDAW Group<sup>50</sup>, and one from the Canadian Feminist Alliance for International Action<sup>51</sup>. Both reports outlined concerns regarding the abuse, discrimination and violence experienced by Aboriginal women [read girls]. In response to concerns raised by various NGO’s, the United Nations, CEDAW (on the occasion of their 5<sup>th</sup> reporting on Canada) singled out British Columbia, and made the following recommendations:

35. The Committee is concerned about a number of recent changes in British Columbia which have a disproportionately negative impact on women, **in particular Aboriginal women...** [read girls].

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<sup>48</sup> Saskatchewan, Commission on First Nations and Métis Peoples and Justice Reform, *Legacy of Hope: An Agenda for Change, Vol. 1* (June 21, 2004) [www.justicereformcomm.sk.ca](http://www.justicereformcomm.sk.ca)

<sup>49</sup> Andrews, *supra*, note 10.

<sup>50</sup> B.C. CEDAW, *British Columbia Moving Backwards on Women’s Equality*. Submission to the United Nations Committee on the Elimination of Discrimination Against Women on the Occasion of the Committee’s Review of Canada’s 5<sup>th</sup> Report (Jan. 23, 2003).

<sup>51</sup> FAFIA, *Canada’s Failure to Act: Women’s Inequality Deepens*. Submission to the United Nations Committee on the Elimination of Discrimination Against Women on the Occasion of the Committee’s Review of Canada’s 5<sup>th</sup> Report (Jan. 23 2003).

36. The Committee, through the State party, urges the government of

British Columbia to analyze its recent legal and other measures as to their negative impact on women [read girls] and to amend the measures, where necessary.<sup>52</sup> [*emphasis added*]

Justice for Girls urges the provincial government to heed the United Nations' recommendations and conduct a systemic review of the justice system and its response to Aboriginal girls who have experienced violence, thereby honouring their human rights as enshrined in international instruments.

Amnesty International, in *Stolen Sisters*, provides a comprehensive set of recommendations that should be reviewed and implemented by both Canada and the province<sup>53</sup>.

## **6) *Inquiry/Systemic Review:***

*There are... several notorious examples of the justice system failing Aboriginal women [read girls] who have been victims. Specific study of Aboriginal women in the criminal justice system is therefore called for.*<sup>54</sup>

Over 10 years ago, a report prepared for the then Minister of Justice, Honourable Kim Campbell, recommended a specific study into Aboriginal women [read girls] and the criminal justice system. The example referenced in the above quote related to the murder of Helen Betty Osbourne, a young Aboriginal woman who was murdered in Manitoba.

We echo this recommendation, and in light of the cases that we have monitored - *R. v. Kim*, *R. v. Tremblay*, *R. v. Dezwaan*, *R. v. Punn*, and *R. v. Ramsay*— we urge you to initiate a comprehensive inquiry/review of these specific cases and the justice system's response to violence against Aboriginal girls in British Columbia more generally.

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<sup>52</sup> United Nations Committee on the Elimination of Discrimination Against Women, Twenty-Eighth Session, 13-31-January 2003. CEDAW/C/2003/1/CRP.3/Add.5/Rev.1.

<sup>53</sup> Amnesty International, *Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada* (October, 2004).

<sup>54</sup> Canada, Minister of Justice, *Report on Aboriginal Peoples and Criminal Justice* (Ottawa: Law Reform Commission of Canada, 1991) at 92.

## **IV. Recommendations:**

### Systemic Review:

- ◆ **Attorney General: commission an inquiry into, or engage an independent systemic review of, the justice system's response to violence against Aboriginal girls in British Columbia.**
- ◆ As part of the above inquiry, conduct an in-depth review of *R. V. Dezwaan*, *R. V. Ramsay*, *R. V. Tremblay*, *R. V. Kim*, *R. V. Punn*, and the police investigation of the Highway 16 murders/missing young women.

Following are Justice for Girls preliminary recommendations and points for discussion as part of a systemic review:

### Section 718.2(a)(I):

- ◆ Education of justice personnel (Crown, judiciary, police services, etc.) regarding the background and rationale for s. 718.2(a)(i), and the importance of this sentencing principle as it relates to the discrimination, racism and sexism experienced by Aboriginal girls. Anti-racist education regarding Aboriginal peoples and, in particular, how discrimination facilitates violence against Aboriginal girls;
- ◆ CPIC: include whether the offence was a hate-motivated crime.
- ◆ Police training: ensure training is provided at the Justice Institute or RCMP training for recruits, and in-service training for officers, on how to report hate, bias or prejudice as elements of an offence.
- ◆ Crown: encourage advancement of s. 718.2(a)(i) principles at trial.
- ◆ Conduct survey of cases of violence against Aboriginal girls – as to whether s. 718.2(a)(i) was advanced - if not, why not.

### R. v. Ramsay:

- ◆ Review of Ramsay's court decisions especially as they relate to violence against, and abuse of, Aboriginal girls.
- ◆ Provide explanation for delay in removing Ramsay from his public judicial functions.

### Justice System:

- ◆ Review implementation of recommendations made in the Attorney General's report on *Working with Aboriginal Child Victim Witnesses*;
- ◆ Review and provide justice system personnel (Crown, Police, Judiciary, etc.) with training on the use of protective procedures pursuant to s. 486 of the *Criminal Code*;

- ◆ Provide training for all justice system personnel regarding the impact of violence, poverty, and racism in the lives of teenage Aboriginal girls; provide anti-racist education and cultural sensitivity training to justice system personnel;
- ◆ Police Services: greater sensitivity and attention to investigations of violent crimes against Aboriginal girls; Training regarding their responsibilities pursuant to section 3 (b) of the *Code of Professional Conduct Regulation*.
- ◆ Encourage more serious, crime specific and comprehensive bail and probation conditions for men facing charges of violence against Aboriginal girls. Create a policy or recommendation to the judiciary to restrict men with criminal histories of violence against women and/or children from accessing bail.
- ◆ Develop policy to proactively employ protective procedures in all cases involving sexual violence against Aboriginal girls

*Support & Advocacy for Aboriginal Girls:*

- ◆ Provide training for all justice system personnel about the traumatic impact of male violence in the lives of Aboriginal girls. This training must address racism as the context for many crimes of violence against Aboriginal girls. Cross-cultural and sensitivity training must be a fundamental component of this training;
- ◆ Provide funding to Aboriginal women's groups to develop and sustain support and advocacy programs for Aboriginal girls who have been victims of male violence.

*International:*

- ◆ Review United Nations CEDAW recommendations made to the British Columbia government as they relate to services for Aboriginal girls who have been the victims of male violence.

## **V. Conclusion:**

*Given the level of male violence that young women have faced and their marginalization through poverty, systemic racism, and other forms of oppression, programs and services for girls must respond to the compounding effects of multiple forms of oppression and repeated exposure to violence.<sup>55</sup>*

Justice for Girls looks forward to an opportunity to discuss our concerns and recommendations with you. As set out in this brief, we view it as absolutely essential that an independent systemic review or inquiry be conducted into the justice system's response to our society's most vulnerable young women – Aboriginal girls. This was recommended to the former Minister of Justice Kim Campbell over 10 years ago and the matter remains urgent. We also hope that you will invite Aboriginal women's organizations, front-line women's anti-violence organizations and Aboriginal legal scholars to be at the forefront of defining the terms and priorities of such an inquiry.

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<sup>55</sup> Justice for Girls [www.justiceforgirls.org](http://www.justiceforgirls.org)

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