Jessica Black

Tupiq Nappaqtauliqtuq: Meeting Over-Incarceration and Trauma with Re-Centering Inuit Piusiit

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Jessica Black

Jessica Black is a Nunavummiut from Iqaluit. Jessica has spent her career so far imbued within the field of justice. She is currently residing in Victoria, B.C., while she completes a juris doctor at the University of Victoria, but her home and heart remain in the North. Her dream is to practise environmental and indigenous law in a way that advocates and contributes to the arctic and its peoples. She is passionate about circumpolar affairs, complex policy issues, art, and loves surfing and cycling.

Qujaliniq

First and foremost, thank you to all my family, especially to my sisters, Paleah and Kyra, my mother Susan, and my partner Mark.

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Finally, thank you to those have influenced and supported me along the way — there are too many of you to name, but I hope when you read this you will know how thankful I am for your influence.

Nakurmiik
Qujannamiik

tiiturumaaviit?

“He could speak some Inuktitut, but not like Mike”[1]

My grandparents are Michael and Margaret Gardener.[2] They immigrated to what is now Nunavut by ship from rural England in 1955 as Anglican missionaries and as a newly engaged couple. Unmarried couples were prohibited from cohabitating, so my grandfather settled in Kimmirut and my grandmother in Pangniqtuuq. They were married aboard the CCGS *C.D. Howe* in September 1956, after the groom arrived three days late through bad weather. On anniversaries, my grandmother is keen to remind everyone that she is still deciding whether to keep him.

The newlyweds made Kimmirut their home, where my mother was later born in a small cabin next to the ocean shore. They moved to the community of Kinngait in 1961, then Pangniqtuuq in 1970 and finally Iqaluit in 1981. They built their entire life in Nunavut where my grandparents raised my mother and my two aunties to speak Inuktitut as close-knit members of their community. They later custom-adopted my uncle.

My grandmother was given the name Kuukutaaq (dear tall cook) and my grandfather was Mike or sometimes Ajuriqsuiji (the word now used for minister). My grandfather performed all his sermons and counselling in Inuktitut, travelling by dog team all over the north. My grandfather tells me his favourite times were always community dancing and games. My grandmother raised their children and volunteered full-time at community nursing stations. My mother tells me that one of her most vivid childhood memories comes with the rare arrival of a plane in the community, whose pried-open cargo door revealed the scent and sight of fresh oranges. My aunties, uncle and mother like to talk about the feelings of the transitions they experienced in their youth, about how their first exposures to “the south” were confusing and often deeply uncomfortable; a feeling, I sense, still lingering within them.

My aunties, uncle and mother all eventually met their spouses in Nunavut, each having three children. My older auntie lives in Grise Fiord with her husband, whose family were brought there by high arctic relocation. My younger auntie lives in Iqaluit and married my uncle, a man from Pangniqtuuq. They also helped raise me. I would later recognize my uncle’s face in a manuscript and learn that he played a key role in translating and transcribing the words of Nunavut Elders. The same Elders whose words inspire the direction and set the waypoints of this paper.

My birth father from Hudson, Quebec, married my mother in Pangniqtuuq in 1980. They had my older sister in Iqaluit, and five years later, I was born in Almonte, Ontario. My mother and birth father divorced before

1 Pauloosie Angmarlik as cited in: Saullu Nakasuk, Jarich Oosten and Frédéric Laugrand, *Introduction [Interviewing Inuit elders]* (Iqaluit: Language and Culture Program of Nunavut Arctic College, 1999), 105.

2 During my time as a Jane Glassco Northern Fellow, I attended a meeting in Ottawa where Nunavut’s first Member of Parliament, Nancy Karetak-Lindell, supported us as a resident mentor. It was here that before a presentation, she reminded me that it was respectful and part of Inuit custom to introduce your family before speaking. “So the audience knows who you are,” she said. I intend to uphold this tradition in the context of this paper.

I was two. My mother raised us in Iqaluit as a single mother for many years until she met my non-birth father from Grise Fiord in 1994. My youngest sister was born shortly after in Montreal, Quebec. She quickly earned the name Miijukpaaluk (preciously small), her ancestors are high arctic relocation survivors and descendants of the filmmaker Robert Flaherty.

I present these details for the purposes of both my identity and accountability. I choose to situate myself in it to more honestly engage in this topic in hopes that it will expose my biases in productive ways. I have observed that Western scholarship in law and science place particular value on impartiality in pursuing subjects with the view that the results are more credible. I have also observed in Western scholarship that considerable effort is made to remove or reduce bias and create distance between the issue and its analyst through language and word choice. The trouble with the perception of strict impartiality is that it can silence contributions and voices in its presentation, and stifle accessibility.[3]

This paper will look at criminal justice operations in Nunavut. As a Nunavummiut of European decent, in composing this paper, and throughout much of my adult life, I recurrently grapple in considering my family's complicated role in colonialism by helping to usher Christianity into the Arctic. This fact coexists alongside my own feelings of identity, my experience and my immense love and gratitude for my diverse family. As a non-Indigenous person, being a Nunavummiut is an immense privilege, and recognizing this in researching and writing this paper, I attempt to decolonize my approach. Growing up in Nunavut I see and closely feel some of the tensions of colonialism play out within my family and the wider aspects of my community. As with many Nunavummiut, I have interacted with the justice system at different levels and in different ways, and I understand how it comes to bear on the lives of those who call Nunavut home. I believe these interactions with justice along with connections and complicated narratives in my life spurred me to pursue a professional career within the justice system.

The views expressed herein are my own and I do not propose to present a voice for Nunavummiut or Inuit. The topic of this paper concerns the Nunavut criminal justice system, which operates on a small portion of Inuit Nunangat (Inuit Homeland), so I sought out articles and reports composed by Inuit and by those who have carried their voices throughout. I attempt to uphold the integrity of the voices of Inuit in this paper and to build my analysis from them because they are the inherent authority. They offer the solutions.

3 R. DiAngelo, "White Fragility" (2011) *International Journal of Critical Pedagogy*, 3:3, page 59.


ilokka

> “I am very aware of this because I am an elder. I’m not that old, but my life really started to change when the missionaries told us about Christianity. We were told that Inuit piusiit were really bad. That is what we were told. From that point on my life really changed. I felt that I went into a void. We were no longer to follow the maligait of the Inuit if we were to begin to follow that which was good. I think we are still in this state today. I think we have to begin thinking about where Inuit have come from and where we are going to go in the future. I think we are in a three-way situation. We have to really think about this carefully for we have to plan ahead. We have to look to the past and look at where we were, we have to look where we are today. We see that people’s physical and mental well-being are deteriorating. We have to start reviving ourselves again. We can do this together, Inuit and qallunaaq. Through working together we will get strength. If we work together there will not be divisions. Life would be a lot easier and more enjoyable. If we don’t work together there will be more hardship. We don’t know of what kind, but it will be there.”[4]

Inuit never relinquished Inuit sovereignty over their lands but were assumed subjects of Canadian Crown. This imposition of Crown’s sovereignty ushered in its laws, policies and values onto Inuit who began increasingly to feel its effects. There was a fundamental disconnect between those who lived community life realities and the bureaucrats among the treelined streets in capital regions of the south and Northwest Territories. These feelings spurred the negotiation of the largest land claim in Canadian history, the *Nunavut Land Claims Agreement* (“*Agreement*”), carved from Inuit Nunangat, predicating the creation of Nunavut as a geopolitical state in 1999. The *Agreement* served as a platform to reconcile Canada’s assumed sovereignty in return for

4 Mario Aupilaarjuk as cited in: Alexina Kublu, Jarich Oosten, Frédéric Laugrand and Wim Rasing, *Perspectives on Traditional Law [Interviewing Inuit elders, Volume 2]* (Iqaluit: Language and Culture Program of Nunavut Arctic College, 1999), pg. 34.

a tangible opportunity to better empower Inuit within the Canadian political structure to make the critical decisions necessary for the betterment of Inuit and their lands. The *Agreement* founded new Inuit birthright organizations, co-management boards, a public government with special obligations under the land claims, and instills Inuit autonomy and control within societal institutions.[5] The majority Inuit population acts to insulate Inuit self-determination through democratic practices, suggesting that the Government of Nunavut should operate uniquely as a *de facto* Inuit self-governance system.[6]

On April 1, 2017, Nunavut turned 18 years old.[7] Within the territory there is much to be proud of, and to a large extent the hopes for Nunavut are still coming to fruition. Yet, a continuing point of tension exists: the justice system. The criminal justice system in particular continues to be a contentious topic due to its seeming inability to address Nunavut's high crime and incarceration rates. The fact that this particular topic remains an issue is worth our investigation because, at its core, crime in any society arises out of conflict.[8] Defining crime helps us recognize when a society deems a certain behaviour contrary to maintaining its social order, and to examine its response for "correction."[9] When a dispute arises between individuals, it becomes a crime where society defines it as such through laws and social norms.[10]

Today, as society expands in complexity, the State[11] takes the role of institutionalizing definitions of crime and subsequent responses through the criminal justice system.[12] Its purpose is to define and process disputes in an attempt to resolve them through imposing punishments as a method of deterrence and rehabilitation in the interest of public order and protection.[13] The State is obligated to resolve criminal disputes brought before it through the criminal justice system. In the case of Nunavut, this process is derived from a formal system created by the Canadian state, comprised of the Royal Canadian Mountain Police ("RCMP"), the Nunavut Court of Justice, the Correctional services and the Community Justice division.[14]

This paper aspires to interrogate why and how the criminal justice system in Nunavut

5 This will be discussed in greater detail in the following pages.
6 Inuit make up 86% of Nunavut's population as cited in Statistics Canada (2011), "Number and Distribution of the Population Reporting an Aboriginal Identity and Percentage of Aboriginal People in the Population, Canada, Provinces and Territories," Table 2, National Household Survey.
7 *Nunavut Land Claims Agreement*, S.C. 1993, c. 29.
8 H. Zehr, "Doing Justice, Healing Trauma: The Role of Restorative Justice in Peacebuilding," *South Asian Journal of Peacebuilding* (Minneapolis: Peace Prints, 2008), 1:1.
9 *Ibid*.
10 J. Kleefeld, J. Macfarlane, J. Manwaring, E.B. Zeibel, M. Parlović, A. Daimsis, "Charter 1: Conflict Analysis" Dispute Resolution: Reading and Case Studies, (Toronto: Emond Montgomery Publications, 2003).
11 By State, I mean the prevailing formal system of government in place. I use "the State" preferentially throughout the paper as I feel it captures more than just governments, which are often strictly drawn along jurisdictional or constitutional lines. In Nunavut, because it is a territory, some of the ideologies, values and structure of the federal government and the Canadian State are downloaded onto Nunavut's territorial government, so using "the State" to describe the governing structure in Nunavut I feel is more appropriate.
12 M. King, A. Frieberg, B. Batagol, and R. Hyams, "Chapter 1: Introduction," *Non-adversarial Justice* (Annandale, Australia: Foundation Press, 2009).
13 s. 718 of *Criminal Code of Canada* R.S.C. 1985, c. C-46 outlines some of these objectives.
14 The "formal system" of criminal justice is the one provided by the state through Canadian law and policy. For the purposes of this paper, I make the distinction between the "formal system" of criminal justice in recognition that informal systems of criminal justice exist in communities. Indeed, in many respects, these informal systems of criminal justice are as important in resolving conflicts and crimes in society. Indeed, these informal systems often include culturally specific responses to the management of conflict within society.

experiences such high rates of crime and introduce possible solutions.[15] It seeks to examine the broader historical and systemic factors as the context in which the criminal justice system operates as well as its internal processes. Guided by the words and wisdom of respected Elder Mariano Aupilaarjuk, this paper will be presented in three sections: *Past*, *Present* and *Future*.[16] The first section, *Past*, will focus on Inuit perspectives of Inuit law and justice through the voices of Elders who lived and experienced it as the first Europeans were settling in the north. Their voices will present an overview of Inuit justice from which to begin to gain a basic understanding of some of its core values and principles which guide its processes. This section will outline the historical transition made by Inuit in the past 100 years instigated by increasing European presence and settlement in the Arctic, culminating in the statute signing into creation the territory of Nunavut and a new model of criminal justice.

The second section, *Present*, will broaden the scope of analysis to include institutional and social factors that contextualize the broader systemic influences in which the Nunavut criminal justice operates. It will then return focus to the formal criminal justice system in Nunavut by examining its internal mechanism, beginning with the RCMP, the courts, correctional services and probation, and then finally community-based justice. By taking a broad view and then refocusing, I will argue that high rates of crime are a result of larger, systemic issues. I will argue that a primary motivator in the creation of Nunavut was to provide better justice outcomes for Inuit by approaching crime and addressing its root causes in a manner consistent with Inuit worldviews. However, the system as it exists today is incapable of improving results because it is essentially a mirror of the mainstream Canadian criminal justice systems that frequently displaces the possibility of Inuit approaches to addressing crime and conflict. Displacement frustrates pluralistic approaches to resolving conflict, which can be more effective at healing and resolving disputes in favour of a system that remains largely ineffective. The Canadian approach tends to prioritize denunciation, deterrence and separation, whereas the traditional Inuit approach tends to prioritize rehabilitation and accountability. I argue that displacement occurs because those who implement the system in both Nunavut and Canada tend to favour and place disproportionate value and reliance in the Canadian approaches to addressing conflict, making it an accepted and established status quo. The consequences of favouring the Canadian approach speaks for itself in the statistics and the testimony of Nunavut community members, which tell of the current system's uncanny ability to perpetuate and create new harms with its high rates of trauma, victimization, crime and over-incarceration.

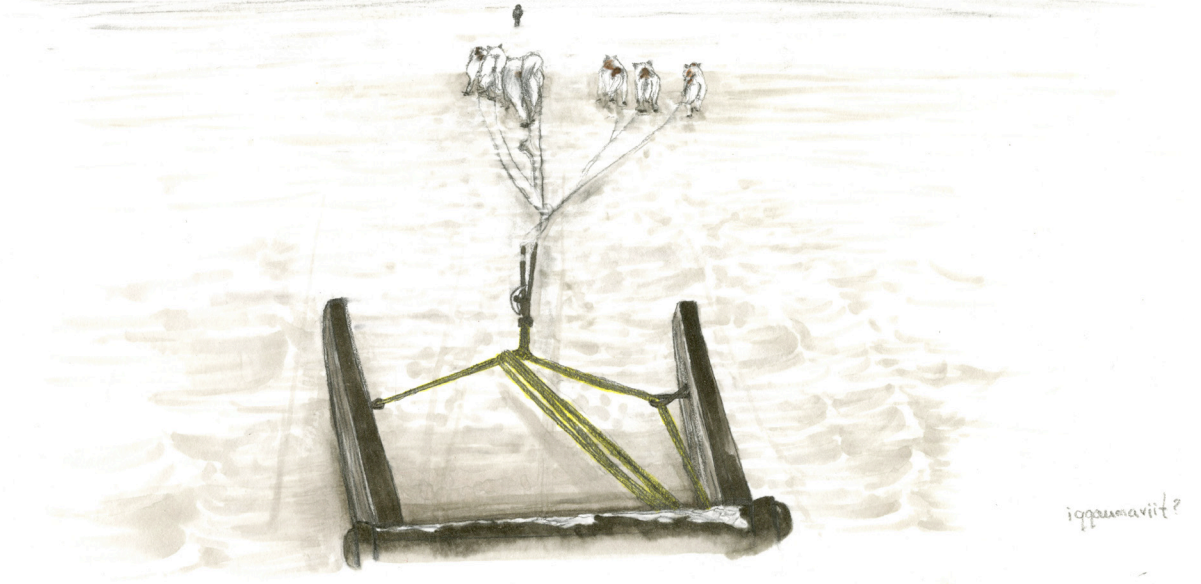
In the third and final section, *Future*, I argue that to address crime and incarceration rates in Nunavut the federal and territorial governments must value

15 I acknowledge that the scope of fully examining the criminal justice system in Nunavut is beyond this paper. My intention is to begin setting out some of the parameters and ideas of this work.
16 Elder Mariano Aupilaarjuk and his wife Marie Tulimaaq are highly respected Elders from the Kivalliq region of Nunavut who have passed away. Their contributions to Inuit perspectives on society and philosophy are invaluable and continue to be implemented and studied. Dividing the paper into these three sections comes from his words presented in the Introduction quote.

Inuit approaches to criminal justice on equal terms as Canadian approaches if society is to begin making steps towards an effective justice system. To place equivalent value on Inuit approaches to justice would require a systemic shift as well as a redistribution of resources. I will argue that these considerations are timely. Unique opportunities to makes concrete changes towards this shift are present. Among these are correctional legislation reform and the replacement of Nunavut's largest correctional facility, the Baffin Correctional Centre. The release of reports such as the *Truth and Reconciliation Commission of Canada Findings* in June 2015 and the newly formed National Inquiry Into Missing and Murdered Indigenous Women and Girls also form part of the momentum towards understanding how and why Canadian institutions are experienced differently by Canada's Indigenous peoples than other Canadians. Addressing these differences and their consequences poses significant legal questions surrounding: Indigenous rights, access to justice and colonialism. From a legal perspective, understanding the way Inuit experience the criminal justice system adds essential understanding of the Canadian system by exposing fundamental breaches in the constitutional foundation of the State, the *Nunavut Land Claims Agreement*, as well as Canadian obligations under s.35(1).[17]

In consideration of the vast scope of this topic and space constraints, I recognize and accept that this paper will only provide a starting point.

17 *Constitution Act, 1982*, Schedule B to the *Canada Act* 1982 (UK), 1982, c 11.



iqqaumaviit?

> “I would like to look at the Inuit maligait that we had in the past and compare them with the laws we have today so we could develop better laws for the future. I know they are not the same, but in my opinion it is time we look at this, especially for when we have Nunavut.”[18]

Language is central to understanding any legal system. Terms communicate meaning imbued with specific ideological concepts and contextual knowledge unique to the cultural values and approaches from where they came. Language forms an essential part of how different legal orders interact; how we understand and value legal concepts will depend in large part on the linguistic and cultural vantage point from which we understand, give and receive interpretations. So, translating legal terms from one language to another can be both enlightening and inherently problematic as expressions are often not directly translatable in attempting to describe the perspectives of a particular legal culture. In the case of Inuit law, our understanding is nuanced further by the diversity shared in the regional variations in both language and culture within Nunavut.[19]

In beginning to understand the contours of Inuit law and justice, the voices and teachings found in the 1999 series “Interviewing Elders” is an invaluable contribution. The research was conducted by students of the Inuit Studies program at the Arctic College in Iqaluit. Inutuqait (a group of Elders) were interviewed in Inuktitut about their perspectives on an expansive range of topics by students that was later published into volumes.[20] Much of the information presented in this paper comes from interviews conducted in Iqaluit between 1997 and 1998, concentrating on Inuit law and tradition.[21] The Inutugait interviewed in these courses were Marie Tulimaaq (from Rankin Inlet, but originally from Natsilingmiut), Lucassie Nutaraaluk (from Iqaluit, but originally from Kinngait), Mariano Aupilaarjuk (from Rankin Inlet, but originally from Natsilingmiut), Akisu Joamie (from Iqaluit, but has spent significant time throughout the south-Baffin region), and Emile Imaruittuq (from Iglulik) with valuable contributions of the students, supervisors and interpreters.[22] I have included the Inuktitut words spoken by the Inutugait and provided in these series with their translation as they hold some of the vital perspectives of the Inuit legal system. Even a brief scan of these manuscripts makes clear the sophistication and complexity of Inuit justice systems. As such, the purpose of this section is to first recount a high-level overview of key concepts within Inuit justice, and second, detail how this key organization system came to be interfered with since the onset of Canadian settlement.

18 Aupilaarjuk as cited in: supra note 4, at pg. 16.
19 Imaruittuq as cited in: supra note 4, at pg. 119 and 172.
20 *Supra* note 1 at pg. v.
21 *Supra* note 4, at pg. 7.
22 *Supra* note 4, at pg. 8.

> “I can be asked what I know. I state only what I know.” [23]

The fabric of Inuit society is entwined with the roles played by each person in a community. Every member had a role, including in the administration of justice; however, it was the Innatuqaq or Inutuqaq (Elder), angajuqqaaq or ataniq (leader) and angakkuq (shaman) who tended to play decisive roles. The laws and customs comprising Inuit justice reflect Inuit piusiit (moral values and social customs) carried through the generations and used to resolve conflict and correct and guide behaviour.[24] Some of these are maligaq (accepted guidelines followed in an inherent manner. Sometimes translated as “Canadian Law”), maligaralaaq (minor rules), piqujaq (acceptable customs and manners to be followed) as well tirigusuusiit and pittailiniq (both relate to what is forbidden actions or words).[25] Being deeply embedded, there was no need for written codification of laws and customs,[26] instead they are transmitted through observation,[27] art,[28] as well as orally through conversation, unikkaaqtuat (stories)[29] and pisiit (songs).[30]

Crime and conflict was created by going against these laws and customs, and responses were in turn guided by Inuit law and custom and nature. In each case, much attention is given to the context of the conflict.[31] Important contextual factors included the nature and severity of the crime,[32] such as who the individual(s) involved were through their roles and kinship,[33] and whether they had committed previous offences[34] or displayed genuine remorse,[35] the source of the conflict,[36] and the way the conflict was impacting the community.[37]

Counselling was the primary way that crime and conflict were resolved. This was primarily done in person by an Inutuqaq or Inutuqaiq[38] who have the role of counselling the wrongdoer and make decisions about the situation.[39] The first instance of wrongdoing by a person would be responded to by showing care to them as valued members in the community.[40] These efforts was made in order to reintegrate them back amongst the community to restore harmony and balance, and not cause emotional trauma that would prevent their return.[41] Recognizing and upholding value and dignity interrelates with both respect

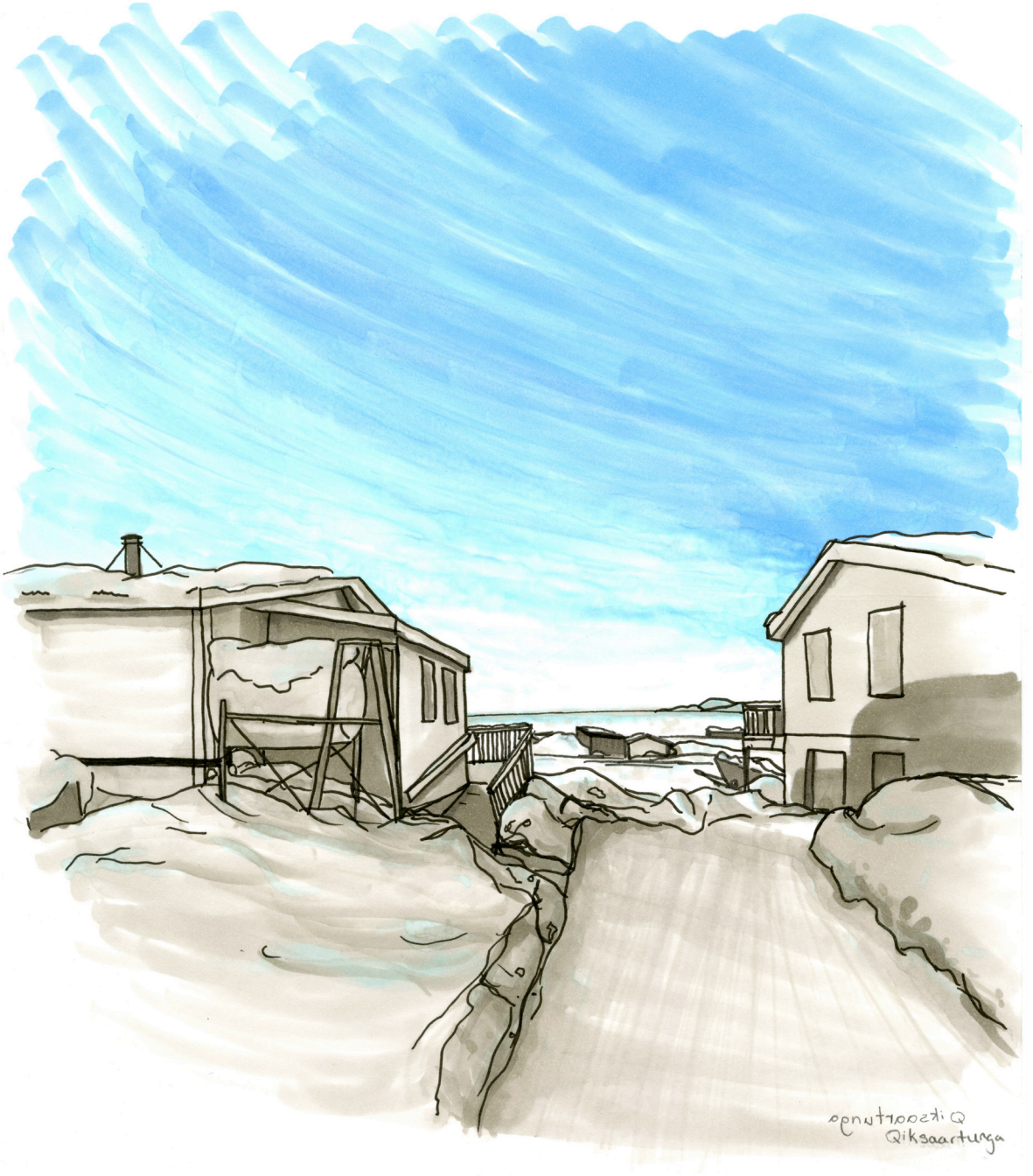
23 Saullu as cited in: *supra* note 1, at pg. 65.
24 Akisu as cited in: *supra* note 4, at pg. 46.
25 *Supra* note 4, at pg. 1–2.
26 Aupilaarjukp as cited in: *supra* note 4, at pg. 13.
27 Imaruittuq as cited in: *supra* note 4, at pg. 84.
28 Dorothy Eber, *Images of justice* (Kingston: McGill-Queen’s University Press: 2008).
29 Susan Enuaraq as cited in: *supra* note 4, at pg. 179.
30 Susan Enuaraq as cited in: *supra* note 4, at pg. 179.
31 Nutaraaluk as cited in: *supra* note 4, at pg. 160.
32 Aupilaarjuk as cited in: *supra* note 4, at pg. 30.
33 Nutaraaluk as cited in: *supra* note 4, at pg. 121.
34 Imaruittuq as cited in: *supra* note 4, at pg. 51.
35 Nutaraaluk as cited in: *supra* note 4, at pg. 160.
36 Imaruittuq as cited in: *supra* note 4, at pg. 57.
37 Imaruittuq as cited in: *supra* note 4, at pg. 44.
38 Imaruittuq as cited in: *supra* note 4, at pg. 93.
39 Imaruittuq as cited in: *supra* note 4, at pg. 53.
40 Imaruittuq and Nutaraaluk as cited in: *supra* note 4, at pg. 51 and 221.
41 Imaruittuq as cited in: *supra* note 4, at pg. 187.

and responsibility, which are especially strong maligaq for Inuit,[42] including respect for wildlife.[43] There were reciprocal duties on behalf of the person who had done wrong to qaqialirniq (to confess a wrongdoing), especially to victims, and not keeping things a secret.[44] This goes hand in hand with aniattunik (letting go), to begin the healing process and seeking forgiveness.[45] Investigations seek to gather evidence not to place blame, but to seek truth and information about the source of crime to better craft an appropriate response.[46] Anagkkuq played special roles in uncovering truth and obtaining confessions, which were rigorous in cases where there were no admissions of guilt.[47] Without this important process unsanctioned revenge was more likely to occur.[48]

Sanctions were delivered by both the community and nature.[49] High levels of observation within community allowed the monitoring of progress,[50] but within the counselling process, confidentiality was taken seriously, so it was primarily done in private, possibly with immediate family members, to preserve the integrity and avoid gossip.[51] Repeated offences were addressed in counselling by increasing the severity and intensity of response addressing the consequences of continued law-breaking.[52] In these rare circumstances of a crisis or if private counselling was ineffective, the community as a whole be permitted to be directly involved in these conversations.[53] To have Inutuqaq and broader members of the community involved in addressing directly the issues of an individual was viewed as an embarrassing event and an definite escalation of the response towards addressing conflict.[54]

The ultimate sanction given was banishment. It was only given as a last resort after multiple attempts to rehabilitate the person in conflict.[55] Banishment was either a literal abandonment of the individual or a temporary exclusion from taking part in the community. [56] Murder was seen as the worst crime and did the most damage in the community, which could warrant a response of abandonment, but even then, the response to murder was highly contextual.[57] Inutuqait still sought to understand the reason why murder was committed, the likelihood of re-offending, and if there was genuine remorse.[58] If there was no remorse and a high likelihood of re-offending, there was little chance of a person who committed murder being successfully integrated back into the community, so they might be banished or killed.[59]

42 Aupilaarjuk as cited in: *supra* note 4, at pg. 28.
43 Aupilaarjuk as cited in: *supra* note 4, at pg. 36.
44 Imaruittuq as cited in: *supra* note 4, at pg. 145.
45 Elisapee Ootoova as cited in: *supra* note 1, at pg. 59.
46 Imaruittuq as cited in: *supra* note 4, at pg. 47 and 57.
47 Aupilaarjuk as cited in: *supra* note 4, at pg. 49.
48 Imaruittuq as cited in: *supra* note 4, at pg. 48.
49 Aupilaarjuk, as cited in: *supra* note 4, pg. at 14.
50 Akisu as cited in: *supra* note 4, at pg. 53.
51 Aupilaarjuk as cited in: *supra* note 4, at pg. 49.
52 Imaruittuq as cited in: *supra* note 4, at pg. 51.
53 Imaruittuq as cited in: *supra* note 4, pg. 44.
54 Imaruittuq as cited in: *supra* note 4, pg. 46.
55 Imaruittuq as cited in: *supra* note 4, pg. 54.
56 Imaruittuq as cited in: *supra* note 4, pg. 54.
57 Imaruittuq as cited in: *supra* note 4, at pg. 162.
58 Nutaraaluk as cited in: *supra* note 4, at pg. 160.
59 Nutaraaluk as cited in: *supra* note 4, at pg. 164.



These maligait, maligaralaaq, piqujaq, tirigusuusiit and pittailiniq formed Inuit legal orders and outlined the roles governing Inuit society based on piusiit. Slowly, the Inuit legal order began shift from its place as the central form of governance in all manner of life with contact.[60] The introduction and eventual assertion of the Canadian state with its laws and institutions changed society's relationship to Inuit legal orders and values.

> "We would go for long periods of time when we didn't have contact with qallunaat" [61]

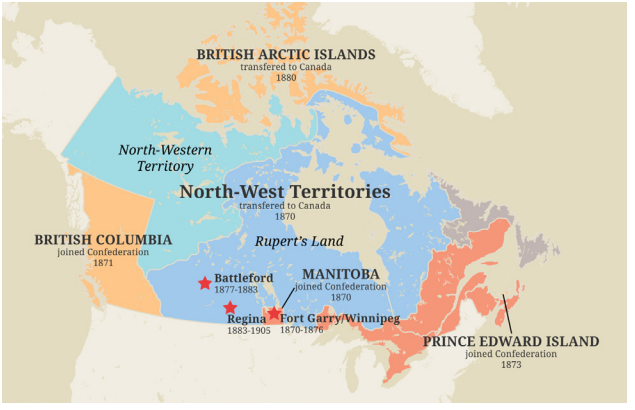
Understanding the arrival of Europeans and the creation of Nunavut in Inuit Nunangat is compelling as an often overlooked narrative in the broader colonial history of the arrival of the Canadian state to Indigenous peoples and lands. Inuit conceptions of "owning" land were contrary to Inuit piusiit and inconsistent with unilateral declarations made by European entities for vast areas of Inuit Nunangat. Ignoring Inuit sovereignty and with no consultation or consent, the Hudson's Bay Company had declared much of the area of southern Nunavut in 1670 as "Prince Rupert's Land." [62] Similarly, next to this territory, the British Crown at some point declared is ownership of "North-Western Territory" alongside Prince Rupert's Land, which comprised a significant portion of what we know is Inuit Nunangat. Likely spurred by the confederation of Canada in 1867, the Hudson's Bay Company sold this land to the British Crown to join with the North-Western Territory, creating the Northwest Territories in 1870. [63] The British Arctic Territories, islands to the farthest north, were transferred to Canada in 1880, completing the picture of Canadian sovereignty with the land transfers which would later become Nunavut.[64] The map in figure 1 shows the land areas in question.

Although documented contact between Inuit and Europeans occurred as far back as the 1500s, the sustained presence of Europeans in the land now known as Nunavut, did not occur until after World Wars I and II.[65] Nunavut was one of the last places to be colonized in North America.[66] The first permanent European settlers in Inuit Nunangat were employees of the Hudson's Bay Company, missionaries and RCMP, each marking the transition into what see today. "Interview with Elders" recounts how, by the time of each of the Inutuqaq's birth, Europeans were present but an uncommon

60 Aupilaarjuk as cited in: *supra* note 4, at pg. p 26.
61 Elisapee Ootoova as cited in: *supra* note 1, pg. 14.
62 Gordon W. Smith. "The Transfer of Arctic Territories from Great Britain to Canada in 1880, and Some Related Matters, as Seen in Official Correspondence." *Arctic Institution of North America*, Vol. 14, No. 1 (1961), March: 1–80.
63 *Ibid*.
64 *Ibid*.
65 Kenn Harper, *In Those Days: Arctic Crime and Punishment, Book 2* (Iqaluit: Inhabit Media Inc., 2015).
66 Nunavut Tunngavik Incorporated, Annual Report on the State of Inuit Culture and Society, pgs. 13–14: Examining the Justice System in Nunavut, (Iqaluit: Nunavut Tunngavik Incorporated, 2014), pg. 5.

Figure 1

Northwest Territories
1870



Source: http://www.pwnhc.ca/wp-content/uploads/2014/10/map-1870.png

sight and the first time seeing one was a memorable experience.[67] With the arrival of the RCMP, the criminal justice system was one of the first Western institutions used to assert Canadian sovereignty in Inuit Nunangat. For a period of time, the Canadian government seemed content to not interfere with the Inuit methods of justice being carried out amongst Inuit and, to a certain extent, applied to Europeans.[68] It was not until 1919 when the first Inuit, two Inuk men named Sinnisiak and Uluksuk, experienced a Canadian formal prosecution and sentence as a demonstration of "British justice" being applied and "taught" by a State that viewed the Arctic as inhabited by "uncivilized, prehistoric savages."[69]

Between 1950 and 1975, the Canadian government took an active role as the primary agent of the change in the Arctic, which swept through what would become Nunavut.[70] Canada's gradual Arctic establishment crept, in the name of Crown sovereignty, through institutions like the RCMP and schools. During this time, schools, nursing stations and houses appeared, and many Inuit families recall this was when their family made the transition from their camps on the land into permanent settlement life.[71] It is also a time when many atrocities were committed in asserting Canadian sovereignty and attempting to integrate Inuit into a Canadian society favouring European values and culture. Paternalistic and racist policies resulted in such things as the Inuit high Arctic relocation and forced settlement,[72] residential schooling[73] and the qimmiijaqtauniq (the dog slaughter),[74] leaving

67 Example: Paniaq as cited in: *supra* note 1, pg. 49.
68 Qikiqtani Inuit Association, *Qikiqtani Truth Commission: Thematic Reports and Special Studies 1950–1975* (Iqaluit: Inhabit Media Inc., 2014), pg. 20.
69 *Supra*, note 68, pg. 4, and S. Grant, *Arctic Justice: On Trial for Murder, Pond Inlet, 1923* (Montreal and Kingston: McGill-Queen's University Press, 2002).
70 *Supra*, note 70, pg. 20.
71 *Ibid*, pg. 23 and pg. 46.
72 For more information, see: J. Borrows and L. Rotman, *Aboriginal Legal Issues: Cases, Materials, and Commentary*, 4th Edition (Markham, ON: LexisNexis Canada Inc., 2012), pg. 595.
73 *Supra*, note 70, pg. 33.
74 *Supra*, note 70, pg. 43.

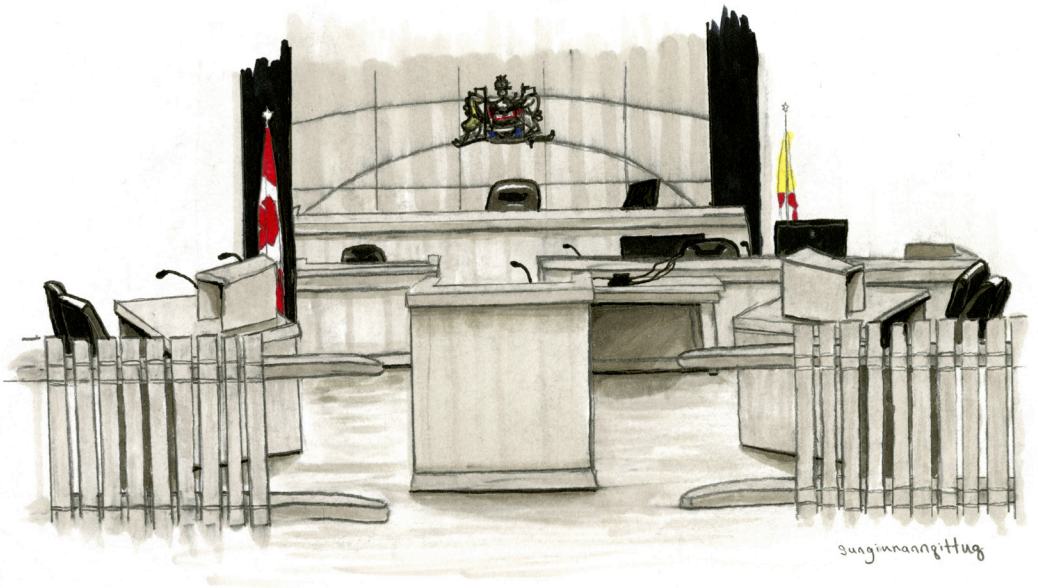
a legacy of distrust and trauma felt across generations.

By the 1970s there was growing awareness and dissatisfaction among Inuit and other Indigenous and non-Indigenous Canadians about the state of Inuit and other Indigenous communities in Canada.[75] The declaration that Canada was the sovereign and ultimate owner of Inuit Nunangat had to be reconciled with the fact that Inuit had never relinquished their lands, leading to negotiations between the Crown and Inuit. Negotiations culminated in the *Nunavut Land Claims Agreement* ("NLCA") in 1993 and later the creation of Nunavut as a geopolitical territory of Canada in 1999.[76] Powerful Inuit leadership sustained the mobilization of Inuit towards self-determination and founded Nunavut's creation — a new territory changing the face of Canada forever, made in part to sustain and evolve the movement of Inuit Nunangat and piusiit preservation for future generations of Inuit.

In the years of negotiations leading up to its creation, when Nunavut was spoken of, the same breath often relayed how Inuit would regain control of their land and lives.[77] For one, Nunavut's demographics would ensure there would always be an Inuk premier holding the power to advocate for Inuit and Nunavut's interests to the prime minister and in top-level federal-territorial-provincial meetings.[78] The series "Interviewing Elders" is remarkable body of scholarship for many reasons, including its timing. The series, published in 1999, captures perfectly the Inutuqait perspective on numerous issues facing society and their hopes to reconcile these matters as they anticipated the creation of Nunavut with greater control by Inuit. Both the interviews and the planning and implementation documents frequently concentrate on mechanisms to address the disproportionately high rate of crime and violence in Inuit communities so poorly served by the system at the time.[79] Indeed, the Nunavut Implementation Committee reports designing a new model of justice for the new government, articulated that improving the administration of justice in Nunavut would require equal investment in the social, economic, cultural, health and well-being of the Inuit population to ensure a full partnership." A full partnership with Inuit necessarily includes the meaningful recognition and operationalization of Inuit piusiit as an integral element of Nunavut society.

The next section of the paper explores how Nunavut serves Inuit now. It begins by continuing this section's conversation about Inuit law and colonialism, and then moves to broadly examine the lager social systems designed by the state to realize "a full partnership" and Inuit involvement at different levels within these different social systems. The analysis will progress by inspecting how these broader systemic institutions influence Nunavut's criminal justice operation. It will examine each of the internal mechanisms of criminal justice in more detail, to see how it responds to the crime and conflict it is mandated to address.

75 J. Borrows and L. Rotman, *Aboriginal Legal Issues: Cases, Materials, and Commentary*, 4th Edition (Markham, ON: LexisNexis Canada Inc., 2012), pg. 603.
76 *Supra*, note 68, pg. 5.
77 For example: Jose Kusugak, *Nunavut: Inuit Regain Control of Their Land and Their Lives* (Copenhagen: International Work Group for Indigenous Affairs, 2000), pgs. 20–28.
78 Jose Kusugak, *Nunavut: Inuit Regain Control of Their Land and Their Lives* (Copenhagen: International Work Group for Indigenous Affairs, 2000), pg. 28.
79 *Supra* note 76, pg. 5.


Jungiunaangittug

> “We were left behind. But now we want to take part in what is happening. That is why we should keep on talking about how things used to be done. Because it is not written, people think it does not exist. This makes us feel like we are caught in the middle. As our land Nunavut is different from the land down South, in the same way the culture of the two people is different from each other. Not everything that is taught in school is useful to our situation up here. You who have been educated in the school system, are probably unable to make use of the Inuit piusiq. If you began to understand this, then it could be put to use.”[80]

The story and consequences of colonization on people are all-encompassing and interwoven. Another strong maligaq of Inuit is tunnganarniq (welcoming new people and being inclusive) and qanuqtuurniq (being resourceful, innovative and adaptable).[81] So resilient are these maligait, that the Government of Nunavut incorporates them into institutional guiding principles for the entire public body. So strong and inclusive are these maligait, that many arriving settlers were welcomed by Inuit; some settlers are even adopted into families and incorporated into community life along with aspects of their Western culture.

In recent decades Inuit increasingly challenge the legitimacy and efficacy of colonizing Western structures that comprise the governing State.[82]A definition of colonialism is “control of other people’s land and goods … the takeover of territory, appropriation of material resources, exploitation of labor and interference with political and cultural structures of another territory or nation.”[83] By this definition Inuit experience colonization.[84] Inuit deal with a State that displaces and devalues central elements of Inuit piusiit, often implicitly. Disassociation of piusiit by the State creates a pervasive tension between the Inuit being and Inuit societal structures continuing to govern the lives of many Nunavummiut. It affects the degree that people understand and respected the newly imported State structures which simultaneously govern Nunavummiut. This tension is particularly felt in circumstances where puisiit and State structures seem to directly contradict each other.

While many Inutuqaq assign some positive value to Western approaches to justice, issue arises when the governance experienced by Inuit places higher value on Western methodology, thereby becoming the default response to delivering services, contrary to Inuit piusiit and at the expense of Inuit perspectives. This implicit valuing is

80 Akisu as cited in: *supra* note 4, pg. 46.
81 “Inuit Qaujimajatuqangit Katimajiit Summary Report 2013–2015,” Government of Nunavut, February 2016, document number: 058-4(3).
82 Or perhaps Inuit voices have not necessarily been increasing but rather, technology has facilitated their move forward where society is confronted and must listen.
83 Idlout Lori, Kral Michael, Minore Bruce, Dyck Ronald, Kirmayer Laurence, “Unikkaartuit: Meanings of Well-Being, Unhappiness, Health, and Community Change Among Inuit in Nunavut, Canada,” December 2011, Vol. 48, Issue 3-4, pgs. 426–438, pg. 426.
84 Acknowledging the complex nature and the manner in which colonialism affects our lives makes defining it extremely difficult. In one sense colonialism is a historical event, in another a system, in another it is an identity and in yet another it is a deeply personal experience with its own nuances.

how discrimination both disguises itself and propagates into a systemic problem. It also suggests that solutions are not necessarily met by the complete fusion of Inuit and Western principles into a single system to approach all issues, but rather the careful maintenance of both where each has equal value. However, because Nunavut operates with Inuit majority on Inuit Nunangat, Therefore, in Nunavut, Inuit methods of doing and knowing are the most appropriate approach to a given issue and should not be an institutional or optional add-on, but in many circumstances, the default.

Yet, it seems as Nunavut continues to grow and be shaped, the default delivery of State services, including criminal justice, is through Canadian institutions and not built around Inuit values and relationships, which consequently do not "fit" with Inuit worldview.[85] The presumption is that Western-style systems are foundationally superior and easily imported to any colony to create institutions requiring only minimal adjustment to produce a successful and just state. How are Nunavut's institutions faring?

> "Symptoms of something all around us."[86]

Some argue that the current system is conditioning Indigenous youth for life within institutions as opposed to life within the community.[87] As of 2016, Nunavut has the youngest population in Canada, with a median age of 24.7, and the highest population growth rate.[88] People in Nunavut continue to face challenges relating to physical access to health services, as well as quality and appropriateness of the services despite Canada's universal health care ranking as among the best in the world.[89] The most recent analysis suggest Nunavummiut on average are expected to live approximately 10 years less than the average Canadian (71 versus 81 years old).[90] Self-reporting health is used as an indicator of overall health and, in recent surveys, 60% of Canadians view their health as "very good or excellent,"[91] compared to 38% of Nunavummiut — suggesting that potentially 62%, or well over half, of Nunavummiut view their health as something less than very good or excellent.[92]

85 Shirley Tagalik *Innunnguiniq: Caring for the Children the Inuit Way* (Prince George, B.C.: National Collaborating Centre for Aboriginal Health, 2010), pg. 4.
86 This statement is a partial quote from a community organization participant articulating Inuit worldviews on mental health as cited in: Priscilla Ferrazzi and Terry Krupa, "Symptoms of something all around us: Mental health, Inuit culture, and criminal justice in Arctic community in Nunavut, Canada (2016)," Vol. 165, *Social Science & Medicine*, pg. 162.
87 "Child welfare" in A.C. Hamilton and C.M. Sinclair, The Justice System and Aboriginal People: Report of the Aboriginal Justice Inquiry in Manitoba, Vol. 1 (1991).
88 Statistics Canada, "Table 2: Population size and growth rate, Canada, provinces and territories, 2006 to 2011 and 2011 to 2016," *The Daily*, March 30, 2017, and Statistics Canada "Annual Demographic Estimates: Canada, Provinces and Territories, Section 2: Population by Age and Sex," 91-215-X, 2012.
89 Kluane Adamek, Teevi Mackay & Mitchell White, *Integrating Traditional Practices into Inuit Mental Wellness Programs* (September 2015), Jane Glassco Northern Fellowship, pg. 35.
90 Government of Nunavut, *Health Profile Nunavut: Information to 2014. Office of the Chief Medical Officer of Health Technical Report March 2016*, Department of Health, Government of Nunavut, pg. 13.
91 *Ibid*, at page 16.
92 *Ibid*, at page 16.

Community consultations repeatedly reveal that Nunavut communities face barriers to providing health and mental health supports that include the existence of basic resources, particularly for mental health.[93] Meaningful data on addictions in Nunavut is particularly difficult to develop, but communities will tell you there is a problem with substance abuse. Some studies have suggested that Inuit living in Nunavut are less likely to engage in heavy drinking than other Inuit residing in Canada,[94] but this fails to take into account that the majority of Nunavut communities have chosen to either restrict or ban alcohol. Having a dry community does not mean that no one consumes inebriants or that it is not a problem. Community members, particularly Inutuqaq, voice their concerns over alcohol being one of the sources and aggravating factors of conflict within communities because substance abuse tends to exacerbate existing tensions and create conflict.

> "Things are different because of the alcohol. The elders today are just as knowledgeable as before, but we don't talk or instruct the young peoples as much anymore."[95]

Addiction is strongly predicated by childhood trauma and loss more so than choice, chance or genetic predeterminations.[96] Substances are often used as self-medication and as a coping mechanism for mental health issues.[97] The transition into settlements with "well-intended" social programs offered by the Canadian state were implemented with little to no input from Inuit, and which are sometimes entirely at odds with Inuit social values and organizations began gradually displacing Inuit piusiit as a grounding centre in society.[98] The impacts of settlement and State-sanctioned social programming, such as residential schooling, have undeniably resulted in trauma and societal gaps caused by the disruption of culture.[99] Unaddressed traumas and displacement help perpetuate gaps in social organization by enforcing barriers for individuals to engage in the larger Canadian society and its economies. For example, unaddressed trauma can make it difficult to meet family and community responsibilities, graduate from high school, or maintain gainful employment.

93 See for example, Government of Nunavut, *Public Engagement Report for the Crime Prevention Strategy, A Project of the Government of Nunavut Department of Justice Community Justice Division*. (Iqaluit: December 18, 2015) and "Inuit Qaujimajatuqangit Katimajiit Summary Report 2013–2015," Government of Nunavut, February 2016, document number: 058-4(3).
94 *Supra*, note 87, pg. 30.
95 Apphia Agalakti Siqpaapik Awa as cited in *Saqiyuq: Stories for the Lives of Three Inuit Women* (Montreal and Kingston: McGill-Queen's University Press, 2001), pg. 136.
96 G. Maté, "Addiction: Childhood Trauma, Stress and the Biology of Addiction," *Journal of Restorative Medicine* (2012), Vol. 1, p. 56.
97 G. Maté, "Addiction: Childhood Trauma, Stress and the Biology of Addiction," *Journal of Restorative Medicine* (2012), Vol. 1, p. 60.
98 Shirley Tagalik, *Inuit Qaujimajatuqangit: The Role of Indigenous Knowledge in Supporting Wellness in Inuit Communities in Nunavut*, National Collaborating Centre for Aboriginal Health, Prince George, B.C (2009), pg. 3.
99 See, for example: Truth and Reconciliation Commission of Canada, *Honour the Truth, Reconciling for the Future: Summary of the Final Report of the TRC* (Truth and Reconciliation Commission of Canada: 2015).

Figure 2

Number of People Who Died by Suicide in Nunavut

2012	2013	2014	2015	2016
25	27	32	45	32

Source: Nunavut Tunngavik Inc., "Statistical data on death by suicide by Nunavut Inuit, 1920 to 2014," September 2015, pg. 5.

Disturbances to family and parenting practices in particular have a tendency to perpetuate harm through intergenerational trauma.[100]

Suicide is often associated with trauma and profound loss. Nunavummiut are familiar with suicide. Public opinions regarding suicide range from seeing suicide as a systemic problem arising out of colonization to understanding it as being a part of Inuit culture.[101] In the past few years increasing attention has been drawn to Nunavut's extreme rates of death by suicide, which are about 10 times higher than the national average.[102] *Figure 2* details the number of people who died by suicide in the past five years as reported by the Nunavut chief coroner. This rate does not include the number of attempted suicides, which is nearly four times that of completed suicides.[103] The testimony of Inutuqait within *Interviewing Elders* briefly touches on the cultural elements of suicide by articulating that, historically, suicide was used by Inuit in strict circumstances to preserve the life of a camp as a whole, such as in times of starvation or assisting the gravely ill to die.[104] The Inutuqait found that much of the suicide they see in communities are completed by those who are struggling with finding belongingness experienced as a personal void resulting from adhering neither to piusiit nor Western culture and values.[105] Researchers believe that cultural continuity, through things such as language retention and revitalization, are protective factors against Indigenous youth suicide because cultural elements like language act as social anchors which support identity and connection to a future-self and belonging to a community.[106]

The most recent graduation rate in Nunavut is 31.5% while nearly half, 46%, of Nunavut's population do not have a high school graduation certificate or equivalent.[107] Nunavut also has one of the highest unemployment rates in Canada at 15.4%.[108] In Western societies, attaining a high school diploma is the expected baseline level of education one should receive, which generally links a person's perceived employability to their education level. The Government of Nunavut is one of the largest employers in the territory, and examining the distribution of Inuit who work within it is telling. *Figure 3* below

100 Shirley Tagalik, *Innunnguiniq: Caring for the Children the Inuit Way*, National Collaborating Centre for Aboriginal Health, Prince George, B.C. (2010).
101 Nunavut Tunngavik Inc., "Statistical Data on Death by Suicide by Nunavut Inuit, 1920 to 2014," September 2015, pg. 1.
102 Steve Ducharme, "Nunavut's 2016 Suicide Death Tool Equal the Previous Year's," *Nunatsiaq News*, January 26, 2017. Accessed at: http://www.nunatsiaqonline.ca/stories/article/65674nunavut_suicides_remain_the_same_in_2016_attempts_increase.
103 *Ibid.* The RCMP V division reported 112 situations classified as attempted suicides.
104 *Supra*, note 86, pg. 17.
105 See for example: Aupilaarjuk as cited in: *supra* note 4, pg. 26.
106 *Supra*, note 86, at pgs. 18 and 35.
107 Government of Nunavut, *Department of Education Annual Report 2013–2014* (Iqaluit: Government of Nunavut, 2015), pg. 36.
108 Statistics Canada, CANSIM, table 282-0100 and catalogue no. 71-001-XIE. Last modified: 2017-03-10.

Figure 3

EMPLOYMENT SUMMARY OF THE GOVERNMENT OF NUNAVUT PUBLIC SERVICE			
POSITION	TOTAL POSITIONS	VACANCIES	BENEFICIARIES HIRED
Executive	38	17	47%
Senior Management	164	18	18%
Middle Management	469	111	27%
Professional	1650	320	26%
Paraprofessional	1068	328	63%
Administrative Support	1268	327	85%

Source: "Towards a Representative Public Service: statistics of the Public Service within the Government of Nunavut as of; March 31: 2016." Department of Finance, Government of Nunavut, pg. 3.

demonstrates that the majority of Inuit are working as "administrative support" at nearly representative numbers, while there is a significant dip in Inuit representation in the middle and senior management levels. Significant gaps in Inuit employment at the managerial level is particularly problematic because policy operates, is encouraged and monitored at this level. These positions report to Executive and therefore Cabinet on the status of their division and assist in prioritizing issues. Managers are also responsible for ensuring policies rooted in the NLCA are realized, which impacts how the State operates now and influences its operation in the future. A critical example of this is Article 23 of the NLCA, which is a law requiring State to adhere to hiring practices that are representative of Nunavut's population (i.e., 85% Inuit employment and 15% non-Inuk). If these positions are filled by individuals with little to no understanding of Inuit puisiit and culture, there is a strong possibility that formal policies aimed at their implementation will not be executed well. Gaps in Inuit employment at this level also suggest that informal implementation of policies and laws such as NLCA Article 23 by other staff may be potentially undervalued, thought of as illegitimate, unimportant or misunderstood.[109] For example, Inuit nuatqatigiitiarniagut (Inuit societal values) may be viewed as an inherent principle of operations requiring no or little active implementation rather than guiding principles that must actively direct governmental administration.

Gaps in Inuit hiring matter because employment practices have ripple effects in society. Employment directly relates to

109 See for example: Kathleen Martens "#Article23: Meet the woman who is the voice for bullied government employees in Iqaluit," APTN Investigates, National News, February 1, 2107.

income and housing security, and other social dimensions, which is likely another reason why Inuit negotiated for NLCA Article 23 in particular. Nunavut experiences high rates of poverty, which manifests itself in different but related ways. The latest statistics suggest that the total number of people in Nunavut receiving income support was 14,578, with discrepancies in recipients between communities.[110] As Nunavut's largest and capital city, Iqaluit taxpayers had the highest median income by a large margin ($65,590) compared to other communities, for example, Rankin Inlet ($38,000), Pond Inlet ($22,110) or Sanikiluaq ($18,370).[111] About 70% of Inuit households are food insecure, which is over eight times higher than the national average and one of the highest documented food insecurity rates in any developed country.[112] A comprehensive study conducted several years ago found that 1,220, or 4%, of Nunavummiut are homeless. This same study found that 4,230, almost 50%, of homes did not meet housing standards. Followup studies since have been skeptical of the findings in its unrepresentative capture of true homelessness hidden by transience or overcrowding. Although beyond the scope of this report, women are often disproportionately affected by poverty and its societal fallout.

The statistics described in the preceding pages point to a systemic problem, which perpetuates and, in some cases, exacerbates harm in communities. When Trina Qaqqaq stood to give her speech in the House of Commons on March 8, 2017, she said, "All we are asking for are our basic human rights. Where is the support from leaders with power and abilities to make change?" [113] The voices and data explored in the preceding pages provide a striking evidentiary backdrop to her speech. The sentiments and troubling statistics expressed cannot exist if most Inuit have their basic human rights met — rights which help assure "our family has what it needs. Basic things like food, water, warm clothing and a bed."[114] In this sense, the statistics are symptomatic of something that is all around Nunavummiut; a State that still seems to favour Canadian approaches and values in implementing services and programs; and a State that does so often at the expense of Inuit approaches and values in implementing services and programs, and in doing so sends a self-perpetuating message about the place of piusiit within Nunavut State operations.

Movements toward valuing and operationalizing piusiit within community institutions that significantly contribute to the well-being of Nunavummiut are occurring. For example, Ilisaqsivik (*recognizing one's self* or *a place where one identifies something or an issue*) operates as a nonprofit organization dedicated to community wellness in Clyde River.[115] Incorporated in 1997, when it first opened, the staff recognized that the organization was taking a Western-based approach to wellness that is inconsistent with Inuit puisiit

110 Government of Nunavut, *Nunavut Social Assistance Recipients by Community, Region and Territory, 2005 to 2013*, Nunavut Bureau of Statistics, December 11, 2014.
111 Government of Nunavut, "Nunavut Median Total Income of Taxfilers with Income by Region and Community, 1999 to 2014," Nunavut Bureau of Statistics, November 3, 2016.
112 Nunavut food Security Strategy and Action Plan 2014–16, Nunavut Food Security Coalition, 2014.
113 https://www.youtube.com/watch?v=qoeZw8FbtTU.
114 Government of Nunavut, *Public Engagement Report for the Crime Prevention Strategy, A Project of the Government of Nunavut Department of Justice Community Justice Division* (Iqaluit: December 18, 2015), at pg. 8.
115 *Supra*, note 81, pg. 21.

despite serving primarily Inuit. As a result the team changed their approach, finding the best balance between the two.[116] Since then, the organization's work has gained national recognition and has grown to collaborate with other community organizations, developing a counsellor training program to expand to its area of influence outside of the community.[117] Although Ilisaqsivik is locally and nationally lauded, it continues to rely solely on short-term and project-based funding, a portion of which is from the State.

The State's approach makes visible through its funding decisions which services it supports. In allocating scarce public resources, the State prioritizes issues and approaches to services and therefore ascribes value. If these decisions do not attribute at least equal value to community-based approaches to wellness, how can the government ensure equal access and adhere to its mandate of supporting Inuit puisiit? What are the consequences of unequal access?

> "The person is faced with intimidation, fear and shame. They feel badly so they make things worse for themselves. If the Inuit ways were used, they would have felt sincerity and concern, but today they see it as hopeless. They just say, 'Forget it. I don't care anymore. I might as well just make things worse.' If I were before the court and was made to feel guilt, fear and intimidation and felt alienated from the whole process I would just say, 'Forget this. I don't care anymore' as well."[118]

When other systems — child welfare, education, economic development, food security, housing, social services, health care — do not provide adequate and appropriate access, people are more likely to come into conflict with each other and the law. The need for a new way to effectively address crime and violence rates in communities was a primary consideration in creating Nunavut. In Nunavut's creation, a formalized task force was mobilized to incorporate Inuit legal traditions and perspectives into Nunavut's new criminal justice system as a way of resolving conflict and decreasing crime. There was a sense that Inuit would finally be able to change the criminal justice to stem the historical perpetuation of injustice felt at the hands of the Canadian system by implementing a process culturally appropriate suited to Inuit Nunangat.[119] Although, the new government is a

116 *Ibid*, pg. 21.
117 *Ibid*, pg. 22.
118 Imaruittuq as cited in: *supra* note 4, pg. 51.
119 *Supra*, note 68.

public institution, its origins and statutory obligations derive from the NLCA and directly relate to Inuit self-determination.

The following pages will examine how the criminal justice system in Nunavut is not working in the way that many who fought for its creation had hoped. Criminal justice is a visible centre where imported Canadian values and principles are firmly imposed on the people of Nunavut. I argue that, in many ways, the Canadian criminal justice system in Nunavut acts like a metaphorical funnel for Nunavummiut. Because once a person enters it from a community its processes tend to drive a person down toward additional criminal justice processes requiring more contact with the State rather than back into their community. If the State itself is a source of conflict, its task of resolving disputes becomes inherently problematic. Further, if the State favours adversarial responses to crime with few mechanisms and resources for diversion, most crimes will tend to culminate in a cycle of imprisonment or release with no meaningful intervention.

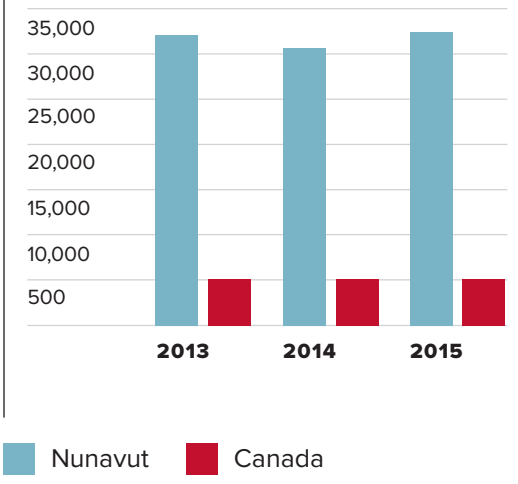
> “More people have to report things to the RCMP and work with them. Why are people scared to report? Why are people not reporting?”[120]

Elucidating on the analogy of the Nunavut criminal justice funnel, the very top of the funnel's entrance would be the RCMP because their services are carried out broadly first within the community and are generally the first to respond to conflict. If a conflict fits within the Canadian Criminal Code definition of a crime, the State is obligated to intervene, in which case, the RCMP will charge a person perceived to be causing the conflict and sometimes remove them from the community.[121] Nunavut's high rate of crime means that the RCMP is required to frequently intervene in the lives of Nunavummiut. *Figure 4* below depicts recent police-reported adult crime rate trends, relative to the national average crime rate. The rates of crime in Nunavut are high and the types of crime being committed are more severe, pointing to a greater proportion of people in communities being exposed to or victimized in serious violent criminal disputes, such as murder or sexual assault. *Figure 5* illustrates the crime severity index of Nunavut relative to Canadian rates.[122] Such prevalence of violence and victimization helps normalize violence, reduces reporting and confounds efforts to restore and protect communities all the while making it more essential.[123] Most violence is perpetrated against family members, particularly women

120 *Supra*, note 111, pg. 109.
121 H. Zehr, “Doing Justice, Healing Trauma: The Role of Restorative Justice in Peacebuilding,” *South Asian Journal of Peacebuilding* (Minneapolis: Peace Prints, 2008), 1:1.
122 A point of caution: in 2012 Statistics Canada changed the way they report rates of crime from Table 2a to 2b.
123 M. Riedel, *Criminal Violence: Patterns, Explanations, and Interventions, 4th Edition* (New York: Oxford University Press, 2016).

Figure 4

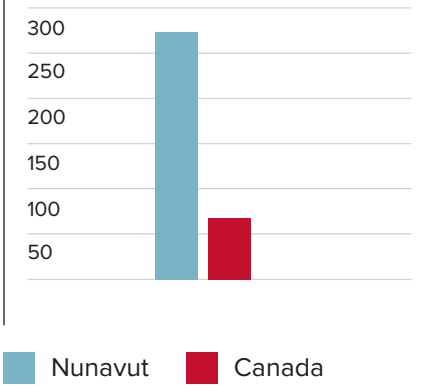
Police Reported Crimes



Source: Statistics Canada

Figure 5

Crime Severity Index Comparison Between Nunavut and Canada



Source: Statistics Canada.

and children, making these numbers troubling.[124] Analysis conducted in 2014 concluded that one in every two Inuit women had experienced a sexual assault as a child.[125]

Considering that the RCMP is a first responder, intervener and law enforcer in every Nunavut community, in many ways they are the face of the State criminal justice system. Organizational expectations and the historical presence of RCMP in the Arctic suggest why their organization may have difficulty in policing Nunavut communities. The chronology of northern settlement with the arrival of the RCMP discussed in the previous section, along with the severe nature of the crimes being committed in Nunavut, breeds an intensity that can foster resentment and trauma on both sides of RCMP-community relationship in a way that tends to propagate itself. [126] The intense front-line nature and difficulty of the RCMP work means that RCMP officers are often first to arrive on a scene, where there is violence and often that violence is between family members, with children involved, and often in a close-knit community.[127] There has been sustained pressure to increase the number of Inuit RCMP members to increase mutual understanding and respect; however, the RCMP face recruitment challenges and the majority remain southern members. An RCMP member recently lamented in a community consultation meeting that there is an immediate need for intense cultural and language training for the RCMP.[128]

124 Statistics Canada, *Family Violence in Canada: A Statistical Profile, 2013* (2014), Juristat Article: Catalogue no. 85-002-X.
125 *Supra*, note 68, pg. 24.
126 See for example: Alex Brockton, "Ottawa police investigate RCMP-involved shooting in Pond Inlet, Nunavut," CBC News, March 19, 2017, and "RCMP officer shot to death in Nunavut hamlet," CBC News, November 6, 2007.
127 *Supra*, note 68, pg. 15.
128 *Supra*, note 111, pg. 154

> “We only take sides during conflicts and through court. We are not dealing with our own conflicts between our own people.” [129]

The courts represent the next ring in the funnel analogy. The person selected as the perpetrator of the conflict by the RCMP enters the funnel towards the next stage, the courts, once criminally charged. The courts adjudicate crime with an end of finding either no guilt or guilt accompanied by State-sanctioned punishments established in the interest of public order and protection.[130]

The creation of the Nunavut Court of Justice (“the Court”) was envisioned to play a central role in criminal dispute resolution different from any other Canadian court. Its organization and unique features were to be reflective of both Inuit puisiit and community realities.[131] The Court unified the three levels of the judiciary into one, amalgamating each function to enhance efficiency in resolving criminal disputes. The unification is thought to increase access to justice by generating a unified response to almost all serious criminal and civil matters at local levels.[132] The Court’s mandate to better address conflicts at local levels was supported by several innovative programs and services. A Justice of the Peace (“JP”) system and an Inuit Court Worker program, each intended to increase the number of Inuit working within the Court by providing training.[133] The JP program is particularly innovative; they hear summary conviction matters arising out of territorial statutes, municipal by-laws, and selected criminal cases. The vision was that the training programs would be a conduit through which Inuit could take their rightful place as authorities in resolving criminal disputes in the territory, decreasing Nunavut’s reliance on southern judges who are extremely costly and unfamiliar with Nunavut or Inuit. The development of a circuit Court brings criminal hearings and sentencing into each community in Nunavut. Circuit Court seems to create part of the problem, however. Community members perceive and experience the Court as delivering “parachute justice” where unfamiliar lawyers, court workers and judges occupy the community for a short period to hand out sentences and then promptly leave.[134] Lastly, the Court integrates with Community Justice through a protocol allowing for cases to be diverted away from the traditional adversarial court to Community Justice Committees, which will be discussed further.

Despite all of these functions, the Court still employs the same adversarial processes as most Canadian courts. All judges apply the *Criminal Code of Canada* to process conflicts with Canadian Law. Although perhaps obvious, it is nonetheless critical

129 *Ibid*, at pg. 135.
130 *Criminal Code of Canada* R.S.C. 1985, c. C-46, s.718, outlines some of these objectives.
131 Nunavut Implementation Commission, Footprints 2: A Second Comprehensive Report of the Nunavut Implementation Commission (October 1996), 238 as cited in *Supra*, note 68, pgs. 5, 7, 24.
132 *Supra*, note 68.
133 Nunavut Social Development Council, *Report of the NSDC Justice Retreat and Conference “Towards Justice That Brings Peace”* (November 1998).
134 Natalia Loukacheva, *The Arctic Promise Legal and Political Autonomy of Greenland and Nunavut* (Toronto: University of Toronto Press, 2007), pg. 41.

to explicitly state that because the *Criminal Code of Canada* represents one of the central ways Canadian law operates on Nunavummiut: Canadian laws determine innocence or guilt, freedom or captivity. The principles in which the courts determine guilty sentences are important because they represent the values used to approach and address conflict. These are the six principles of the *Criminal Code of Canada* used to sentence a person:[135]

1. **to make a strong statement or example against the criminal act;**
2. **to discourage anyone from committing crimes, including those who commit crimes against other persons;**
3. **to remove someone from the community to separate them from society;**
4. **to help rehabilitate the person who committed the crime;**
5. **to compensate the victims or community of the crime; and,**
6. **to encourage the person who committed the crime to take responsibility and acknowledge the harm done to victims and community.**

In comparing these principles to the criminal justice puisiit discussed in the first section, there is some overlap; however, the process used to apply these principles and the priority in which these are applied in Canadian and Inuit legal systems are often antithetical. The Canadian legal approaches tend to favour the first three principles of denunciation, deterrence and separation, while Inuit legal approaches tend focus on the fourth and sixth principles: rehabilitation and taking responsibility for the wrongs committed. The State's approach further serves to exacerbate conflicts by not addressing underlying causes and by applying principles in an adversarial context. Adversarialism is often inattentive to the voices and needs of the victim, accused and community, and tends to be most concerned with procedural fairness over substantive justice. It uses prosecution to resolve disputes through the assignment of blame and guilt. It decontextualizes criminal disputes by narrowing it within the framework of laws as rules which focus on punishment rather than healing or rehabilitation.[136] Those who are already vulnerable or disenfranchised find themselves at a particular disadvantage within this system. The State's focus on the adversarial punitive mode of criminal justice described likely disadvantages all Nunavummiut, but the shift away from the restorative approaches required in Inuit legal systems is predominantly and disproportionately felt by Inuit, which impacts the function of all society.

The Supreme Court of Canada ("SCC") convened in *R v. Gladue* [1999] 1 SCR 688 to recognize and address the growing disadvantage being felt by many Indigenous communities in Canada. In grappling with the alarmingly high rates of crime and incarceration among Indigenous communities,[137] the SCC hints at the tension created by the imposition

135 *Criminal Code of Canada* R.S.C. 1985, c. C-46., s.718.
136 J. Kleefeld, J. Macfarlane, J. Manwaring, E.B. Zeibel, M. Parlović, A. Daimsis, "Charter 1: Conflict Analysis" *Dispute Resolution: Reading and Case Studies* (Toronto: Emond Montgomery Publications, 2003).
137 Office of the Correctional Investigator, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: Office of the Correctional Investigator of Canada, 2012).

of the Canadian judicial approach onto Indigenous peoples. The SCC held that, in most cases, the person in conflict with the law, the victim and their community, is not well served by this approach.[138] The court recognized that the system often works to discriminate against Indigenous peoples, leading to overrepresentation in correctional institutions.[139] So, the SCC introduced a new principle requiring, by law, that courts consider all sentencing alternatives other than jail in consideration of the circumstances of the offending person, particularly if they are Indigenous.[140] These circumstances are often articulated as "*Gladue* factors" and are intended to help a court understand the relationship between the person and their community and the systemic background contributing to the particular offense (e.g., substance abuse, poverty, racism and family or community breakdown).[141]

Twelve years later, the SCC in *R v. Ipeelee*, 2012 SCC 13 ("*Ipeelee*"), re-evaluated *Glaude* and found that it had made little difference — Indigenous peoples were still being over-incarcerated at disproportionate rates.[142] In investigating why *Gladue* had not made the hoped-for difference, the SCC found that in most cases it just was not being applied by the courts because it was viewed as inapplicable or a race-based justification for different sentences.[143] The SCC found the reasons the judiciary gives for not applying *Gladue* are incorrect interpretations. *Gladue* is not "reverse discrimination," but a tool to unveil the inequality perpetuated by the status quo. The SCC in *Ipeelee* notes how things such as employment status, level of education and family situation, normally taken into consideration, may appear as neutral information relevant to sentencing, but they are socioeconomic factors that "conceal an extremely strong bias in the sentencing process."[144] In other words, better understanding the current systemic barriers and background faced by a person leads to a better understanding of their case,[145] and a better understanding should result in better justice outcomes *for everyone*.

Applying the legal principles offered in *Gladue* and *Ipeelee* opens the judiciary to a form of resistance against the problem of discrimination in the criminal justice system.[146] Through the biases imported from Western ideals and standards, the poorly housed, differently educated and employed all appear to be better candidates for jail sentences, which ignore how they got there.[147] Fundamentally different worldviews and values may lead to different understanding about the appropriateness and effectiveness of a sanction and its ability to achieve the principles underlying a sentence. Consider for a moment through the eyes of a Canadian judge a case with a hunter versus a policy analyst reviewed

138 *R v. Gladue* [1999] 1 SCR 688 at para 74.
139 People who identify as Indigenous make up approximately 4.3% of the Canadian population but are 24.6% of the prison population as cited in: Office of the Correctional Investigator, Annual Report of the Office of the Correctional investigator 2014–2015" (Ottawa: Office of the Correctional Investigator of Canada, 2015).
140 *Supra,* note 135.
141 *Ibid*, at para 80.
142 *Supra*, note 77, at para 63.
143 *Supra,* note 135, at para 64.
144 *R v. Ipeelee* [2012] 1 SCR 433 at para 67.
145 *Ibid*.
146 Marie-Andrée Denis-Boileau and Marie-Eve Sylvestre, *Ipeelee and the Duty to Resist*, (2017) 21 Canadian Criminal LR 73.
147 *Supra,* note 141, at para 67.

for their suitability of a community-based sentence. A Canadian judge may view a hunter as unemployed, undereducated and at higher risk to offend than they would a policy analyst. The principles from this case provide a brief glimpse into how the standards used to operate the core Canadian criminal justice system can be discriminatory. It asks us to think critically about whose standards are applied and, more importantly, whose standards should apply.[148]

Gladue demonstrates a small way in which the judiciary can inform their proceedings in the nature of the culture diversity and trauma before them, and represents an unmet potential to construct sentences more in line with Inuit piusiit. The courts in Nunavut should be operating as a *de facto Gladue* court, but Nunavut courts rarely explicitly reference *Gladue* in determining sentences.[149] Whether its principles are applied in Nunavut in every case requiring a *Gladue* application is unknown, yet, the highest Canadian court is clear: all Inuit have a legal right to have *Gladue* factors considered until they expressly waive it.[150] Nunavut judges are required by Canadian law to acquire information regarding these circumstances, even when not automatically done by legal counsel.[151] Pre-sentence reports are also rare but appear to be used more often.[152] However, pre-sentence reports cannot replace *Gladue* reports because *Gladue* reports are supposed to present the ways in which historic and systemic discrimination touch a particular client's life which extends beyond the scope of a typical pre-sentence report.[153]

Requiring the application of *Gladue* and *Ipeelee* affords the court legal recourse in resisting the status quo methods of State-endorsed sanctions, such as long periods of imprisonment, which go against Inuit conceptions of law and justice. It allows for appropriate diversion away from the criminal justice funnel towards more rehabilitative approaches in consideration of Inuit conceptions of law and justice, which are better for the person in conflict with the law and the community in the long run.[154] However, it seems that in a system that processes much violence and has few alternatives, the easiest option is to adhere to the sentencing principles which denounce, deter and separate by sentencing to a custodial institution; the principles most at odds with Inuit puisiit. The Court in *R v. Joamie*, 2013 NUCJ 19, provides some insight into why *Gladue* is inconsistently applied: "The Court's ability to structure a fit sentence is limited to those sentencing tools and sentencing resources provided by government. The Court cannot work miracles. It is the Government of Nunavut that has the legislative and constitutional mandate to determine funding priorities and allocate scarce public resources." (at para 60).

148 For example, who and where is the "reasonable Inuk" in the operation of Canadian criminal law?
149 See: Marie-Andrée Denis-Boileau and Marie-Eve Sylvestre, *Ipeelee and the Duty to Resist*, (2017) 21 Canadian Criminal LR 73, pg. 33.
150 *Supra,* note 141 at para 83.
151 *Supra,* note 141 at para 84.
152 Another issue with this is that pre-sentence reports are often delegated to Nunavut probation officers who have large caseloads and may not have the necessarily training to complete these reports.
153 *Canadian Encyclopedic Digest*, Sentencing, V.1.(b).(ii).B.
154 This point is further expanded in the following pages regarding incarceration.

> “You don’t make a situation better by threatening a person or by putting them in jail. In the past, the deterrents and consequences were extremely severe. I think threatening people with incarceration just makes things worse. I don’t know this for sure, but this is what I think.” [155]

In the analogy of the criminal justice funnel, incarceration and correctional services are represented as the end of the funnel. People in conflict with the law only arrive in this system after contact with the RCMP, being charged and then found guilty and sentenced by the Court. Correctional services are directly impacted by services and agendas outside of their control, such as court proceedings and political will. Correctional services are the one system in society that cannot divert or reject a client — by lawful order, they must accept and place a client into a facility.

The same trends of overrepresentation articulated in the SCC in *Gladue* and *Ipeelee*, are seen in Nunavut’s territorial prisons: Inuit make up 86% of the general public while making up 98–100% of incarcerated population.[156] Last year, 100% of incarcerated women in Nunavut identified as “Aboriginal.”[157] *Figure 6* illustrates how a significant proportion of the territory’s population is in jail at any given time compared to the average national rate.[158]

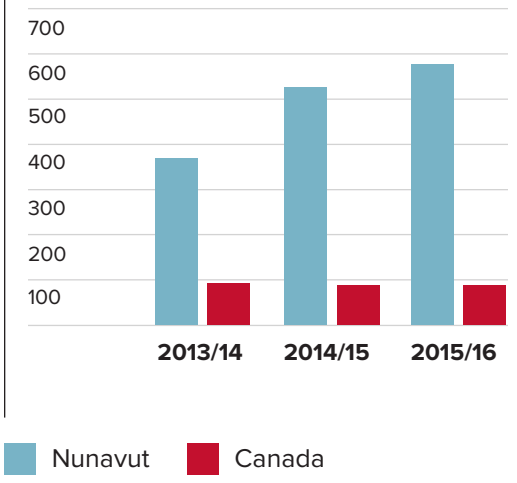
Nunavut’s consistently high adult incarceration rates hinder its ability to deliver restorative justice. In 2015, the Office of the Auditor General conducted an official audit of the Department of Justice and found the department was failing critical rehabilitation and reintegration requirements.[159] Jail in Inuktitut is sometimes translated as “a place to get help,” making such a high reliance particularly problematic because prisons do not work well to rehabilitate people.[160] We can give a correctional facility any name we choose; what matters is the substance of the work done.

The job of correctional services is challenging and dangerous. Effectively integrating restorative principles into Canadian correctional institutions requires a concerted effort to take a different perspective which usually goes against traditional Canadian approaches to criminal justice and is often outside the control of correctional services, making change extremely difficult. The government does try to make correctional institutions more suitable and restorative for Inuit by introducing outpost camps and occasionally

155 Aupilaarjuk as cited in: *Supra* note 4, pg. 28.
156 Auditor General of Canada, *Report of the Auditor General of Canada to the Legislative Assembly of Nunavut — 2015. Corrections in Nunavut — Department of Justice* (Ottawa: Office of the Auditor General of Canada, 2015).
157 Statistics Canada, *Table 5 — Admissions to adult correctional services, by characteristic of persons admitted, type of supervision and jurisdiction, 2015/2016.*
158 I did not include national incarceration rates in this analysis because this was not a consistently reported statistic provided by Statistics Canada and its limited usefulness given the distinctions between sentences served federally versus territorially/provincially.
159 *Supra*, note 153, pg. 25.
160 *Supra*, note 111, pg. 9.

Figure 6

Adult Incarceration Rates in Nunavut and Nationally



Source: Statistics Canada

offering carving programs, land-based programming and other culturally based activities, but this is insufficient. These are institutional add-ons that are constrained by the broader system in which they are expected to function. Integrating rehabilitation principles into correctional institutions that are consistent with Inuit puisiit requires a fundamental rethinking and restructuring of the entire system.

What will often move a lawyer, victim or community to advocate for a sentence involving incarceration is the perception that jail is the ultimate punishment and tool for protection. If you are impacted by crime, especially violent crime, this may be easy to understand and a legitimate response. However, incarcerated people are rarely incarcerated for long and they often return to their community. If rehabilitation and dispute resolution remain inaccessible to an individual in the funnel criminal justice, their transition back into the community only places them into the same situations and potentially worse.[161] As mentioned prior in this paper, separation of a community member who has committed a crime may be necessary because communities in Nunavut are often ill-equipped and under-resourced to protect victims and deal with complex disputes and trauma.[162] Healing trauma and restorative justice are intrinsically interrelated, which implicates the need for criminal justice to adopt these approaches if they are to be effective in preserving public order and protection.[163] Critics assert this applies especially to Indigenous peoples,[164] backed by communities and national statistics, which indicate that, although Indigenous peoples make up approximately 4.3% of the population, they are 24.6% of the prison population in Canada.[165]

Probation services are rolled under correctional services in Nunavut. Most sentences that have a custodial dimension include probation at the end of it, and, where custody is inappropriate, courts will give probation or a conditional sentence as an alternative. Probation orders are served in the community, usually with specific requirements such as abstaining from alcohol or banning contact with an individual. In some circumstances, this provides an effective transition back into the community, and some cases require minimal supervision. But for the complicated cases involving trauma and disputes requiring rehabilitation,

161 *Supra*, note 102.
162 *Supra*, note 54.
163 *Supra*, note 118.
164 *Supra,* note 134.
165 Office of the Correctional Investigator, "Annual Report of the Office of the Correctional Investigator 2014–2015" (Ottawa: Office of the Correctional Investigator of Canada, 2015).

the probation supervisor relies on their personal stamina and the resources within the community to support the person in conflict.

Re-offending and sentencing can be seen in a whole new light when we consider the characteristics of communities in Nunavut. The largest community has a population of about 8000 people, and the smallest has 129, but most have around 1000 people and are extremely geographically isolated.[166] Although Nunavut does not report on data specifically related to reoffending or recidivism, in part because of how complicated and nuanced calculating recidivism is, anecdotal evidence suggests it would likely be extremely high.[167] In other words, the system is a self-perpetuating one: individuals who go through the funnel are more likely to enter it again.

> "The Community Justice Committee is needed so first-time offenders don't need to go to formal court."[168]

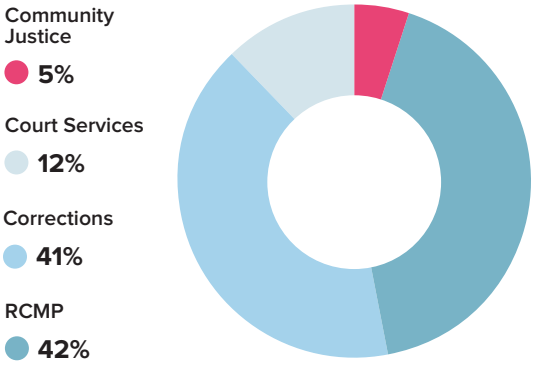
In Nunavut, existing somewhere outside of this funnel analogy but still within the criminal justice system is Community Justice. It exists outside the funnel analogy because no formal processes drive people in conflict with the law towards this system automatically, for the most part, clients must be referred. The broad mandate of community-based victim support and crime prevention make Community Justice extremely beneficial because it offers the only diversion outside of the Canadian system into more community-specific forms of justice. The extent of their service is outside the scope of this report, partly because what they offer is somewhat community-dependent. Of particular relevance to the scope of this paper are the Community Justice Committees ("CJC") and the outreach provided by the Community Justice Outreach Workers ("CJOW") who connect people in conflict with the law to local resources, such as Inutuqait or local programming. CJC offer an alternative to the status quo Canadian court and consist of local volunteers who hear cases (usually low-severity index offences, like theft), from their community and come up with dispositions.[169] CJOWs also help organize restorative client-victim mediation through the CJCs. CJCs and CJOWs are available in nearly every community but referrals are granted only when people in conflict with the law meet strict conditions and if the RCMP or Public Prosecution Service of Canada (PPSC) adhere to the protocol for a referral.[170]

The work performed by Community Justice is generally highly regarded and

166 Nunavut Bureau of Statistics, *Nunavut Population Estimates by Sex, Age Group, Region and Community, 2016,* (2016) Government of Nunavut.
167 See, for example, anecdotes described within: *Supra*, note 68, pg. 34.
168 *Supra*, note 111, pg. 192.
169 *Supra*, note 68, pg. 20.
170 Community Justice Committees generally only hear from people who have already plead guilty. They must be convicted of a summary offence not involving domestic violence.

Figure 7

Budget for the Criminal Justice System in Nunavut



Source: Statistics Canada
Note: Corrections includes Community Justice

effective, however, they are under-funded and under-utilized and not well recognized outside of communities. In 2012/2013, 137 cases were diverted away from the courts, 92 of those were completed, 29 are pending and 12 were referred back to court.[171] But because Community Justice has relatively finite resources, they do not extensively track the long-term outcomes of their service to demonstrably show its efficacy. Anecdotal testimony suggests that the people who go through the process have high levels of satisfaction and it has a lasting effect in resolving and reducing conflict.

Through some of the processes of Community Justice, the State is given a tangible opportunity to divert away from the Canadian status quo of processing people in conflict with the law in an adversarial court system and away from custodial practices. In doing so, there is tremendous opportunity to centre Inuit values within the heart of criminal justice and involve community in any potential healing or rehabilitation that occurs in this process. However, this process does not seem to be as valued or attract the esteem of the State in processing conflict. The status quo system is still favoured even though Community Justice processes seem to most closely resemble the processes of Inuit criminal justice described in the first section and it creates results that are just as effective as incarceration with potential to broadens the sphere of healing by attending to the needs of the community and victim inside the environment of the community. The preference persists despite the desire for change from the Canadian status quo for the betterment of Inuit in founding Nunavut.

Crime is costly. It is costly in the sense that it requires millions of dollars of resources, and it is also costly in its inability to address trauma and victimization, which has residual effects on the lives of all community members. In 2015/2016, it cost an average of $558 per day to imprison someone in Nunavut.[172] That same year, the average number of people in prison was 136, which means that the government spent approximately $75,888 every day, or $27.7 million over the year, to incarcerate Nunavummiut. Given the discussions outlined in this paper to this point, these figures raise the question of how can these funds be better allocated?

Community Justice Outreach Workers and the RCMP are often an invaluable

171 *Supra*, note 68, pg. 20.
172 Statistics Canada. *Table 6: Operating Expenditures of the Adult Correctional System, by Jurisdiction, 2015/2016* (Statistics Canada, Ottawa, 85-002-X, March 2017).

resource in communities addressing or intervening in conflict, yet they represent the two extreme in funding. *Figure 7* illustrates how Community Justice constitutes the smallest potion of the criminal justice budget, funded at 5%, while the RCMP constitutes the largest at 42%. How funding is allocated within each division illuminates where the State prioritizes and values services. A lack of adequate funding allocation to a division restricts the scope and capacity of their initiatives to address criminal disputes.

To this point, this paper presents how a major objective in the creation of Nunavut and the NLCA was Inuit self-determination; a major catalyst of which is the need to control a new criminal justice system to more effectively produce better justice outcomes by addressing the violence and crime disproportionately experienced by Inuit. I argued that this objective has yet to be realized because the current model of criminal justice is a mirror of the adversarial Canadian criminal justice system, albeit with some valuable, but still insufficient restorative and culturally informed attachments. I argued that while opportunities to deliver more restorative and culturally informed justice exist, Canadian approaches to criminal justice routinely favour their own laws and processes, which implicitly devalues and displaces Inuit and the operationalization of Inuit piusiit and maligat in the process of addressing crime. Through this system, I trace how many aspects of this system perpetuates harm and over-incarceration. I argued that this issue relates to and is exacerbated by the systemic issues created by colonization and other historical factors, failure of other societal structures and organization, and underfunding. Decisions made throughout the system ultimately impact who and what we see within our institutional facility and those decisions can be guided by our respective cultures.

The final section will attempt to identify some of the paths forward. It will identify and weigh policy options in decreasing over-incarceration. Changing the situation outlined above requires a concerted effort, more than what can be offered in the space of this paper, and will require answers to questions that may elicit uncomfortable conversations. It will also require tough decisions around where and how to allocate scarce resources. If we need *and* want to change the status quo, what can we do?

tapatuuraaluk.

> “Losing part of the Inuit culture has meant adopting the colonial culture brought upon them — balancing both is what is required as the Inuit reality today is far different than what it was traditionally before colonialism. They must adapt to the Western way but acknowledge privileging Inuit values and traditional knowledge during the process.” [173]

The Nunavut Court of Justice is a demonstration of the cultural primacy of adversarial courts in Canadian culture and its ability to colonize other systems of law. The State expects its subjects to know and act in accordance to its law within the rights granted to every Canadian.[174] Inutuqait see a need to rebuild institutions grounded in Inuit Qaujimajatuqangit (Inuit ways of knowing) to prevent Canadian principles and values from being favoured over Inuit piusiit, especially in criminal justice.[175] The State needs to decrease the system’s over-reliance on incarceration and look to how it can support systems that better accord with Inuit piusiit. If the State looks at crime as disorder in the community while protecting victims, it can do much more to reduce harm by asking *how* a person gets into a situation where they harm others.

National inquiries into the status of Indigenous communities find that the reasons why the child welfare system has disproportionately high numbers of Indigenous children is the same reason why Indigenous peoples are over-represented in the criminal justice system.[176] It means that setting or amending timelines and quotas for Inuktitut-speaking teachers have an impact on communities, which manifests itself in different ways, including in the criminal justice system. The elimination of language is credited as a primary stage in a process of cultural genocide.[177] The survival and resurgence of language and culture act as a buffer ensuring that a generation is not swept into institutions and extracted from communities.[178] I am reminded of a quote from an extremely thoughtful friend and fellow law student reflecting on her experience before the Nunavut Court of

173 *Supra*, note 86, pg. 35.
174 Although outside the scope of this paper, there remains a significant question as to whether Inuit in conflict with the law are sufficiently aware of their substantive and procedural rights necessary to receive fair and equal treatment before Canadian law. A valuable follow-up project to expand on this paper would be to determine this.
175 Government of Nunavut, *Pinasuaqtavut 2004–2009*. (Iqaluit: Government of Nunavut, 2004) as cited in Shirley Tagalik, *Inuit Qaujimajatuqangit: The Role of Indigenous Knowledge in Supporting Wellness in Inuit Communities in Nunavut*. National Collaboration Centre for Aboriginal Health.
176 “Child welfare” in A.C. Hamilton and C.M. Sinclair, *The Justice System and Aboriginal People: Report of the Aboriginal Justice Inquiry in Manitoba*, Vol. 1 (1991).
177 “Child welfare” in A.C. Hamilton and C.M. Sinclair, *The Justice System and Aboriginal People: Report of the Aboriginal Justice Inquiry in Manitoba*, Vol. 1 (1991).
178 “Child welfare” in A.C. Hamilton and C.M. Sinclair, *The Justice System and Aboriginal People: Report of the Aboriginal Justice Inquiry in Manitoba*, Vol. 1 (1991).

Justice, who poignantly lamented "I often stumbled over names that sound so foreign in my mouth. How do you trust someone who cannot say your name?"[179] The answer here seems to be that you do not.

Recalling the words of Trina Qaqqaq in the House of Commons reminds us that achieving basic human rights for Inuit and recognizing Nunavut's full potential by meaningfully implementing Inuit and piusiit are inextricably entangled; each goal can only be met when the other is fulfilled. Familiar arguments may be encountered against proactive integration of Inuit and Inuit culture, such as the notion that, as a public government, Nunavut should not prioritize the needs of Inuit over others. The argument that the Government of Nunavut is a public government and therefore should not make effort to meaningfully uphold Inuit piusiit ignores the fact that Nunavut is born from Inuit Nungat under the NLCA — a constitutional document holding the place of supreme law, requiring the public government to act in accordance to its provisions. It also ignores the fact that the NLCA directly relates to Inuit self-determination, and with a population that is majority Inuit, it should operate as *de facto* self-government. It also ignores the fact that, historically in Western society, to achieve substantive equality often requires formal equality.

Another familiar argument for favouring Canadian values or approaches might be that there is a lack of capacity or that Inuit values are inherent values shared by all cultures. From the perspective of this paper, these arguments are like two sides of the same coin; they are dismissive, which end up stifling the possibility of change by prohibiting critical thinking and innovation.[180] It can lead to over-reliance on the status quo. For example, it can lead to contracting important projects to non-Nunavummiut that produce reports which might not truly understand the context of Nunavut. It can also lead a State employer having difficulty hiring a candidate with the correct qualifications to overlook objective scrutiny of those qualifications to see if they are warranted, and from whose perspective. Things such as educational certification can be a superficial barrier. In the circumstance where certification may be genuinely required, systemic approaches to facilitating making that certification available within Nunavut should be a priority.[181]

The State recognizes that as a government, its services and programs are uniquely situated to work on crime prevention initiatives,[182] and it seems that some of the most fundamental ways in which justice can be improved is diversion away from the Canadian adversarial system. A key lies in how our system views and places value. So long as Canadian systems are valued over Inuit systems in Nunavut, communities' abilities to articulate and administer the full breadth of their legal traditions in addressing criminal disputes on their own terms are limited and the success

179 Jessi Casebeer, *"Justice from Another Planet": The Impact of Imported Justice on Inuit Self-Governance*. University of Victoria, pg. 5. [2016, unpublished].
180 For example, "Kitchen consultation" models articulated in Jackie Price, *Tukisivallialiqtakka: The Things I Have Now Begun to Understand: Inuit Governance, Nunavut and the Kitchen Consultation Model*, 2007. Master of Arts thesis. University of Victoria.
181For example, if criminal justice is finding it difficult to fill its positions with Nunavummiut, perhaps it requires a collaborative and concerted effort on part of each of its elements to provide accessible education or training.
182 Government of Nunavut, *Nunavut Crime Prevention Strategy: Five-Year Strategy* (Iqaluit: Government of Nunavut: March 20, 2017), pg. 3.

of the justice system is therefore limited as well. No add-on within our Canadian framework will stop the systemic bias perpetrated against Inuit and Indigenous people within. Add-ons send the message that Canada will not change no matter how repressive society becomes — it is the person who is experiencing the repression and conflict who must transform and they are only willing to provide some tools. Canada often promotes Indigenous change as a way to normalize the ongoing injustice felt in communities.[183]

In addressing the issue of over-incarceration through policy, options are usually presented and then weighed. From my vantage point, I see only three options:

1. **The status quo**
2. **Address over-incarceration through institutional add-ons**
3. **Address over-incarceration through strengthening Inuit Piusiit**

I was wisely cautioned by Dr. John Borrows that evaluating policy options in the "traditional" approach of presenting policy options through a *pros-and-cons*-style table can create the illusion of a false dichotomy and remove perspective nuances. For example, there are positive and negative aspects to civil disobedience or bureaucratic discomfort depending on whose perspective you take when weighing each. I have opted for a list of considerations encouraging further thought regarding possible opportunities and obstacles created by the three policy approaches, each of these options are explored below.

The Status Quo

The preceding pages describe what is the status quo. They describe the current system which perpetuates harm in many areas of society, including those outside of criminal justice, particularly for Inuit.
In weighing this policy option, the following is worth considering, in no particular order:

- Likely presents the path of least resistance, politically and in strategic planning — some individuals may feel that any alternative to the status quo is unacceptable for different reasons (e.g. "soft on crime," preference for a hard-line tradition punitive approach regardless of evidence).
- Possibility that the status quo will solve over-incarceration over time.
- Some individuals who commit crimes may be reformed by the current system.
- Likely continuation of the cycle of crime and victimization — people who commit crime, victims and communities will continue to be underserved.
- Costly because of expenses associated with the criminal justice system and its impact on wider social services.
- Continuation of a system that has discriminatory tendencies, denigrating human rights.
- Goes against significant evidence which suggests the current system is ineffective at addressing crime.

183 Irlbacher-Fox, Stephanie. *Finding Dahshaa: Self-government, Social Suffering and Aboriginal Policy in Canada* (Vancouver: UBC Press, 2009), pg. 2.

▸ Continue to pay untold and unaccounted for costs related to over-incarceration.

▸ Contradicts State commitments to reconciliation.

▸ Ignores Inuit piusiit and obligations under the NLCA.

▸ Potential to exacerbate current situation, resulting in unexpected consequences and community upset.

Address Over-incarceration Through Institutional Add-ons

The distinction between an institutional "add-on" versus a continuation of the status quo can be difficult to distinguish. What likely makes the distinction between the two is that policy intended to address over-incarceration through institutional add-ons in this section will likely require some recognition that there is a systemic problem with over-incarceration, specifically the over-incarceration of Inuit, and that it can be addressed through the strategic implementation of "culturally informed" or "culturally sensitive" programming, services or buildings. An example of an institutional add-on could be something like a trauma-informed sexual violence program delivered to incarcerated individuals designed for Inuit and delivered in a room shaped like an igluvigak. These institution add-ons are valuable in some sense because on some level they recognize diversity and can potentially address some trauma and some crime, and may help reduce crime rates. However, they also risk doing immense harm through essentializing and failing to address the wider systemic causes of crime and conflict. It is rare that institutional add-ons approach crime and conflict in systemic ways.

In weighing this policy option, the following is worth considering, in no particular order:

▸ May require some dialogue around colonization and racism, which may be unsettling for some.

▸ Potential to be met with resistance and will require a level of public and political support.

▸ Will still require a shift in policy towards implementing and valuing institutional add-ons which implement Inuit principles and values.

▸ Will appear to address crime and has the potential for crime reduction but will not reduce conflict caused by the overall State system and structure.

▸ Potential to address some circumstances of trauma experienced by community members.

▸ Potentially more politically appealing.

▸ Sustained, small, incremental changes have the potential to completely rehabilitate over time.

▸ Requires political will and economic commitments

▸ Mostly ignores Inuit piusiit and does not uphold all obligations under the NLCA.

▸ Potential to exacerbate current situation, resulting in unexpected consequences and community upset.

▸ Contradicts State commitments to reconciliation.

▸ Still implicit devaluing of Inuit ways of knowing and doing.

▸ The development of new programs and services may be costly — it may also be costly in continuing the perpetuation of colonial traumas.

▸ Could provide barriers to bettering society.

▸ Results may not be immediately seen or apparent.

Address Over-incarceration Through Strengthening Inuit Piusiit

Placing equivalent value on Inuit approaches to justice requires a systemic shift as well as a redistribution of resources. Policy provides one mechanism to systemically enact change by formally directing attention and resources.

In weighing this policy option, the following is worth considering, in no particular order:

▸ Provide a positive model for true reconciliation.

▸ Reduce conflict and crime reduction.

▸ Produce a healthier society over all.

▸ Greater adherence to the true intent and purpose of NLCA, in line with greater Inuit self-determination.

▸ Far-reaching impacts with society-wide implications.

▸ Challenges power structures to the extent of possible discord with colonial State-level sovereignty, law and policy.

▸ Potential to be met with resistance and will require public and political support. Public support will be particularly important for accountability and oversight to ensure changes are implemented and reach communities in meaningful ways.

▸ Requires the redistribution of power and the restructuring of State institutions.

▸ Transforms the Inuit-State relationship, rights, and obligations.

▸ Requires considerable dialogue around colonization and racism, which often goes unrecognized and is deeply unsettling for some.

▸ Requires active resistance against the status quo and a fundamental shift in perspective.

▸ Some individuals may feel that this constitutes “reverse discrimination” and as such, others are now being discriminated against.

▸ Potentially extremely politically unpopular.

▸ Results may not be immediately seen or apparent.

▸ Disruption of status quo and the structures which disenfranchise people.

CONCLUSION

If we take seriously the premise I have argued for: that over-incarceration is actually a symptom of larger systemic issues, our policy approach is clear. Addressing over-incarceration requires a response that touches on and integrates many aspects of society. It will require a fundamental shift in the way all Nunavummiut view crime. To look at people who committed offences as offenders is easy and satisfying to imagine a person as just their crime, undeserving of anything but negative attention, especially when they do great harm. In reality, and according to Inuit piusiit, we are much more complex. Decision-makers have a unique opportunity to make some concrete changes with correctional legislation reform and the replacement of Nunavut's largest correctional facility, the Baffin Correctional Centre. In the coming years decision-makers will set a course, the legacy of which will come to shape Nunavut's response to its most vulnerable and traumatized citizens. In taking these first steps, we must look carefully to what Nunavut communities are saying and what is being said by both youth and Inutuqait.

In 2014, the Government of Nunavut consulted with 25 Nunavut communities to solicit their feedback on what they felt was needed to prevent crime.[184] The report recounts recurring themes, such as the requirement for basic amenities, consistency and access to services, such as counselling and substance abuse treatment. The root of much criminal activity in Nunavut is childhood trauma and maltreatment.[185] For example: "There needs to be a marriage between the old ways and the modern ways," [186] and "we need an addictions treatment centre in Nunavut. Right now, people have to go to Ottawa for treatment. We need something here." [187]

The change we require is a rebuilding and rethinking of the way we operate and what the system values and prioritizes. The Canadian criminal justice system operating in Nunavut is a continuation of historic sentiment that sought to render Inuit forms of conflict resolution illegitimate, and is symbolic of the deep unresolved conflict of imperial sovereignty. In undertaking this project, I was continually reminded of the innumerable reports created by countless southern settler legal scholars and academics recounting the dire situation in which the Nunavut criminal justice finds itself, but in the end their voices and my voice mean little if they displace Inuit narratives about how Inuit want to resolve disputes and ensuring support for Inuit efforts to do so. In making shifts away from the status quo, it is usually those who have the most to lose who speak the loudest. In this sense, the voice that deafens us all is the one produced by the Canadian State in Nunavut criminal justice.

184 *Supra*, note 111.
185 *Supra*, note 111, pg. 8.
186 *Supra*, note 111, pg. 16.
187 *Supra*, note 111, pg. 9.

Nukangmma
agahiit.

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