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## Gender, Justice, and the Indian Residential School Claims Process

Cindy Hanson

*University of Regina*, [cindy.hanson@uregina.ca](mailto:cindy.hanson@uregina.ca)

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## **Abstract**

Survivors of Indian Residential Schools in Canada are involved in one of the largest compensation processes in the world. A significant component in the Indian Residential School Settlement Agreement (IRSSA) is the Independent Assessment Process (IAP), an out-of-court process aimed at resolving claims related to serious physical and sexual abuse suffered at residential schools. This article discusses a community–university research collaboration, which set out to explore how women involved in the IAP, including Survivors, support workers, lawyers, and adjudicators, understood the capacity of the model to facilitate healing. The results suggest attention to several aspects of policy development including representations of the body and sexuality, impacts of child abuse and trauma, and colonial histories of power and control, in addition to healing and training strategies.

## **Keywords**

sexual abuse, gender analysis, Indian Residential School, Independent Assessment Process, Survivors, legal settlements, Indigenous policy, community-based research, truth and reconciliation, Aboriginal women

## **Acknowledgments**

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## **Disclaimer**

TRIGGER WARNING: This article describes cases of physical and sexual abuse that some readers may find distressing.

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## Gender, Justice, and the Indian Residential School Claims Process

### Compensation for Indian Residential School Abuses

The history of the Indian residential school system, which began officially in Canada in 1879, is marked by the persistent neglect and abuse of children and, as a result, of Aboriginal communities in general (Funk-Unrau & Snyder, 2007, p. 285)

The Indian Residential School claims process in Canada is a striking example of why a gender and diversity lens or an indigeneity-grounded framework<sup>1</sup> must inform government policy. This article highlights how one policy, the Independent Assessment Process (IAP)—a model used as an out-of-court process for the settlement of claims of serious physical and sexual abuse suffered at Indian Residential Schools in Canada (Aboriginal Affairs and Northern Development Canada [AANDC], 2013)—is experienced and understood by female Survivors involved in the process.<sup>2</sup> The community–university research study, *Who Benefits: Compensation and Women’s Experience of Healing from Indian Residential Schools*, worked in partnership with Elders and an Aboriginal women’s organization to explore how issues of gender and race were presented and understood in the compensation of abuse claims through the IAP. There are few models of compensation or policies that take into account interlocking representations of gender, race, and cultural differences among Canada’s Indigenous peoples. The study discussed in this manuscript will suggest both a rationale and a statement about the need for taking gender and other aspects of diversity into account in the development of policy frameworks.

First, the IAP compensation model is explained in the context of the whole Indian Residential School claims process. With close to 38,000 claims (Indian Residential School Adjudication Secretariat, 2014), the IAP is one of the largest claims processes in the world and it is part of the multi-faceted Indian Residential School Settlement Agreement (IRSSA). The IRSSA resulted from a series of large class action suits that put increased pressure on the Government of Canada to address the injustices suffered by Indigenous peoples at the hands of church-run and state-run schools. Initially, claims regarding Indian Residential School abuses were dealt with through the Alternative Dispute Resolution (ADR) process, which attempted to resolve claims of physical and sexual abuse outside of the court system. Complications with the ADR process, including an inability to address Survivors’ needs, led to the IRSSA, which came into effect in 2007 (Stanton, 2011). The IRSSA included the creation of compensation schemes such as the IAP, the Common Experience Payment (CEP, for loss of culture and language), along with the accompanying Truth and Reconciliation Commission (TRC), all of which were set up to respond to the litigation challenges facing the Canadian government. While a number of Indigenous stakeholders were involved in the process, the reaction by the State to these abuses as a result of litigation concerns, not to outcries from the public, created a reconciliatory response different from other reconciliation processes globally (Stanton, 2011).

Despite the language of “healing and reconciliation” in the IRSSA and, as promoted in Canadian government propaganda, the IAP was designed to focus solely on assessing Survivors’ financial compensations for claims of sexual and physical abuse (Funk-Unrau & Snyder, 2007). The IAP model was negotiated with representatives of all the parties involved including the Canadian government, national

<sup>1</sup> Fleras and Maaka (2010), for example, discuss an indigeneity-grounded framework to be used in developing policy around Indigenous issues as a way of eliminating historical and systemic bias, and providing a post-colonial perspective on policy-making.

<sup>2</sup> The data gathered was gender-specific as explained later in the article.

Indigenous organizational representatives (for example, the Assembly of First Nations), and the churches involved in the operation of residential schools. They also agreed to a larger settlement process in order to deal with the severity of the claims that were coming forward in the ADR process. Many Survivors transferred from the ADR to the IAP and, in certain circumstances, parts of old ADR claims were re-opened and heard under the IAP (e.g., serious sexual abuse, student-on-student abuse cases), and some aspects of loss of opportunity because that compensation category was expanded under the IAP).

The IAP is an out-of-court settlement following a hearing where the Survivor is usually supported by legal counsel, a regional health support worker, and, optionally, a family member and/or a translator. Preparation for the hearing and the scope of what it will include varies from case to case. A representative of the Government of Canada, sometimes a church representative, and an adjudicator hear the case of the Survivor and, using a scale of harms, losses, and other wrongful acts, determine the level of compensation for which the Survivor is eligible.<sup>3</sup> Survivors are also eligible for future care plans as part of the compensation process.

In the Indian Residential School settlement model, the colonial history of Canada's residential schools is not challenged because the stories of Survivors "are not part of the public record in the same way as an official court transcript or judgment" (Llewellyn, 2002, p. 286). However, addressing colonial injustices using sovereign law makes the process problematic (Green, 2012). A more restorative, multi-faceted approach would ultimately recognize that harms are related to "the relationship(s) between and among individuals, communities, and institutions" (Llewellyn, 2008, p. 288), whereas the IAP model uses an individual, private conception of harm. According to Monture (2014), "the impact of individualization of our legal relations moves Aboriginal nations further away from our traditions, which are kinship-based and collective. That women are the focus of these trends cannot escape our attention" (p. 71). The following literature review situates Aboriginal women and the IAP model within the broader context of Canada's colonial strategies and history.

### Colonialism, Aboriginal Women, and Intergenerational Impacts

By the time the Indian Residential School system began forcibly removing Aboriginal children from their families, the *Indian Act* had already formalized male–female inequalities into law and stripped Aboriginal women of any involvement in the political processes of their nations (Maracle, 2003; Native Women's Association of Canada, 2010). The Indian Residential School system was, like other colonization programs and strategies through the *Indian Act* and the Department of Indian Affairs, purposefully gendered to undermine and remove Indigenous women's traditional authority, agency, and roles within families, clans, and traditional governance systems (Maracle, 2003; Olson Harper, 2009). Agents for Canada's Department of Indian Affairs regularly reported on reserve activities in derogatory ways, but they were particularly disparaging in their portrayals of Aboriginal women, who were slandered as bad mothers (Anderson, 2011; Olson Harper, 2009; Wolski, 2009). Aboriginal women and men traditionally shared responsibility for the governance of their nations and for handing down tribal laws, customs, and cultural

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<sup>3</sup> Compensations vary, but are supposed to be based on a point system against which the Survivors' testimonies are assessed. The categories and point system are problematic for several Survivors, as discussed later in this article. An outline of the IAP system is available online (see [http://www.residentialschoolsettlement.ca/Schedule\\_D-IAP.PDF](http://www.residentialschoolsettlement.ca/Schedule_D-IAP.PDF)).

knowledge (Anderson, 2011; Wesley-Esquimaux, 2009). Although gender roles varied from nation to nation as well as within nations, the majority of the literature on this subject suggests that men and women were equally valued for their contributions to the strength and survival of their nations, with Aboriginal women being highly esteemed for their central role in securing the health and well-being of their families and communities (Brant Castellano, 2009; Olson Harper, 2009). As colonization policies were imposed, all Aboriginal peoples experienced the systematic denigration of their cultured gender roles and identities (Wesley-Esquimaux, 2009; Wolski, 2009). However, given the patriarchal and Eurocentric worldviews of the colonizers, “it can be argued that Aboriginal women’s fall from grace was more devastating and widespread” (Wolski, 2009, p. 273). The Indian Residential School system significantly contributed to this “fall from grace” through its mandate to entrench patriarchal values into Aboriginal children (Martin-Hill, 2003) and with curricula that espoused the Euro-colonial vision of civilizing Aboriginal women by enforcing upon them concepts of submissiveness and servitude toward both the colonial class and Aboriginal men (de Leeuw, 2007).

Colonial policies left traumatized women severely impacted and marginalized in both Aboriginal and non-Aboriginal societies (Wolski, 2009). Aboriginal women then lacked legal protection, and were often without the support of their communities (Olson Harper, 2009). Aboriginal women were not complacent in the imposition of these policies, but their lack of available sources of recourse and support affected their abilities to act with agency and to resist the onslaught of colonial values. The Indian Residential School legacy of intergenerational trauma ensued as students already suffering from the pain of residential school abuses returned home to the pain of dysfunctional mothers and fathers, many of whom were unable to cope with the heartbreaking loss of their children (Anderson, 2011).

The Aboriginal Justice Inquiry of Manitoba (Government of Manitoba, 1999) reported that:

The victimization of Aboriginal women accelerated with the introduction of residential schools for Aboriginal children. Children were removed from their families and homes at a young age, some to return eight to 10 years later, some never to return. The ability to speak Aboriginal languages and the motivation to do so were severely undermined. Aboriginal students were taught to devalue everything Aboriginal and value anything Euro-Canadian . . . That [parenting] learning process was denied to several generations of Aboriginal parents. In addition to the physical and sexual abuse that Canadians are now hearing took place in residential schools, emotional abuse was the most prevalent and the most severe. We believe the breakdown of Aboriginal cultural values and the abuse suffered by Aboriginal children in the schools contributed to family breakdown. This began a cycle of abuse in Aboriginal communities, with women and children being the primary victims. (Chapter 13, para. 15)

Intergenerational legacies and trauma continued to weave their way into subsequent generations as Indian Residential School Survivors became mothers and fathers whose parenting skills had been shaped in residential schools that demeaned and abused them (Harrison, 2009; Martin-Hill, 2003) and in homes that could no longer model Indigenous childrearing practices. A focus group participant in the study about the IAP model of compensation explained the impact in the following way:

Like the impacts of residential school—you have alcoholism, you have marriage break ups, like, you know. You have all these kinds of impacts, but a lot of us don’t understand the impacts of residential school. When you’re going to that adjudication hearing they ask you that question—

What do you feel? How was the impact on your life? And a lot of our people won't speak up because they don't understand them. They don't have that knowledge to be able to speak to the adjudicator and say look I've been drinking for 40 years, my family's suffering from depression, I've been depressed all my life, I haven't been able to go to work.

As Indian Residential School Survivors returned to their communities, nurturing and non-coercive childrearing environments wherein the community took responsibility for the child's well-being were lost (Monture, 1995). The sense of balance between personal autonomy and responsibility to family and community that traditional practices taught children was lost (Anderson, 2011). After years of living in residential schools, where they suffered neglect, hardship, forced labour, loss of culture and language, disruption of family and community, and physical and sexual abuse (Funk-Unrau & Snyder, 2007), Indian Residential School Survivors often internalized their experiences of abuse and re-entered their communities with negative learned behaviours (Harrison, 2009; Maracle, 2003). The support and validation that these students needed to resolve their painful experiences and reconnect with traditional teachings were often not available from parents, who were themselves dealing with the trauma of residential schools (Anderson, 2011). Indian Residential School students were left ill equipped to interrupt the legacy of intergenerational trauma that had begun with their parents, and "subsequent generations of children were left with the consequences of what happened to their parents and grandparents" (Aboriginal Healing Foundation, 2002, p. 6). The legacy of intergenerational trauma was thus unleashed upon communities.

Moreover, devastating consequences of intergenerational trauma were learned helplessness and self-hate—the direct result of colonization and the powerlessness experienced by Aboriginal peoples as their lands, children, and cultural ways were taken away with no recourse to address these and other injustices (Anderson, 2011; Government of Manitoba, 1999). Since colonization was itself gendered, intergenerational trauma and learned helplessness can be more deeply understood when viewed through a gender lens. As institutions backed by both the State and the Church, residential schools were used to intellectually, emotionally, spiritually, and psychologically entrench patriarchal Western values into Aboriginal children. For female students, this meant learning to be subservient and submissive to male authority (Martin-Hill, 2003). Consequently, learned helplessness increased women's dependence upon men, decreased their agency, and silenced many voices. Female Survivors often found themselves marginalized in both mainstream society and their own communities (Olson-Harper, 2009) because, as Euro-colonial institutions designed to subjugate girls and women, the residential school system had left them vulnerable to discrimination on the basis of gender, as well as race and class.

While both male and female Survivors were traumatized by their Indian Residential School experiences, the loss of parenting skills and Indigenous childrearing practices were particularly devastating to women. As female Survivors became mothers, they found themselves dealing with overwhelming responsibilities and challenges directly linked to their residential school experiences. Moreover, Aboriginal men, who were also dealing with the loss of their traditional roles, began to adopt the patriarchal ways of the colonizers that they had learned in residential school, including the exercise of power through control, violence, and intimidation; a lack of respect for both equality between men and women and the nurturing of women; and, finally, abandonment of family and responsibility (Anderson, 2011; Wesley-Esquimaux, 2009). Consequently, many young Aboriginal mothers became the sole providers and protectors for their children, despite no longer being respected for their traditional roles. According to Brave Heart (as cited in Wesley-Esquimaux, 2009), the consequences for Aboriginal women were devastating:

Faced with being victims of abuse and abandonment, women turned to substance abuse, suicide, and hopelessness. In trying to provide for and protect children alone (as well as coping with traumatic events in their lifetime such as past sexual, physical and emotional abuse), Native women found themselves and their children in poverty, and many times, unable to cope with all the stressors involved with going it alone. (pp. 21-22)

The most devastating consequence faced by female Survivors was the removal of their children by child welfare authorities. Monture (1999) explains that the historic experiences of the schools “have spread and multiplied within society to other social correctional systems such as child welfare, young offenders, and criminal justice” (p. 26). While this new generation of mothers unquestionably faced significant parenting challenges as a result of their residential school experiences, a record number of Aboriginal children were also being removed from their families and communities from 1960 to 1980, in what was known as the “Sixties Scoop” (Anderson, 2011). Anderson (2011) described the child welfare system as another colonial tool that continued the residential school’s systematic process of assimilating Aboriginal children, thereby dismantling traditional kinship systems and more equitable gender roles.

There continues to be disproportionate numbers of Aboriginal children in the care of child welfare agencies, illustrating Wolski’s (2009) observation that colonization “is perceived by many to be an historical event; however, it must be understood as a current phenomenon” (p. 275). Furthermore, colonization as a current phenomenon continues to have gendered outcomes, and, like other historic colonizing policies, the *Indian Act* and the Indian Residential School system impacted men and women differently. Some of these differences were apparent during the analysis of the data from the study.

### Who Benefits: Compensation and Women’s Experiences

Who Benefits: Compensation and Women’s Experience of Healing from Indian Residential Schools was a community–university collaboration between the community organization Saskatchewan Aboriginal Women’s Circle (SAWCC)<sup>4</sup> and a university scholar with a lengthy history of gender equality advocacy and work as an Indigenous rights educator and ally. It was funded by the Indigenous Peoples Health Research Centre and the University of Regina. The study explored how one specific model for compensation, the Independent Assessment Process (IAP), was designed and implemented through a gender-specific lens.<sup>5</sup> The study examined ways in which gender relations were understood in the IAP compensation model and the degree to which the model could actually lead to healing if gender relations had been considered. The model was examined from the perspective of culturally relevant, gender-specific analysis, which framed the study around the particular experiences of Aboriginal women and their particular colonized experiences of gender (Wolski, 2012). The university researcher had previously assisted Status of Women Canada and representatives from national Aboriginal women’s organizations to develop a framework for a culturally relevant gender analysis (Hanson, 2008).

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<sup>4</sup> According to its website the Saskatchewan Aboriginal Women’s Circle Corporation is dedicated to promoting and enhancing the status of Aboriginal women through education, advocacy, research and resource sharing (see [www.sawcc.sk.ca](http://www.sawcc.sk.ca)).

<sup>5</sup> A gender-inclusive analysis examines how a policy or program affects both men and women (including difference representations of men and women) and provides a more accurate analysis of how specific factors can affect anticipated outcomes. Due to funding limitations, this study only looks at gender-specific factors—that is, factors in the IAP model that affect outcomes for women.

The response from Indian Residential School Survivors to the call for participation in this study far exceeded the initial expectation of 8 to 10 participants. The research data was collected from two focus groups with 23 Survivors who had completed their IAP claims processes. Seventeen women attended the first focus group in Saskatoon, Saskatchewan, prompting calls for a second focus group in Regina, Saskatchewan, which was attended by six participants. The participants were welcomed to the focus groups by an Elder, who was in both cases an Indian Residential School Survivor, and by a member of SAWCC (the community group involved in the study). Also in attendance at the focus groups was a regional health support worker who was a residential school Survivor. Along with the 23 female Survivors, the research team held key informant interviews in person and by phone with five lawyers, five IAP adjudicators, and one IAP deputy chief adjudicator. All of the interviews and focus group conversations were recorded and then transcribed and sorted into themes that emerged from the raw data. A document analysis was also part of the study's process.

The study and data analysis were informed by post-colonial methodologies. For example, relational aspects were fundamental to the research process (Kovach, 2005; Tuhivai-Smith, 1999) and both an Elder and a community organization were part of the process from the onset. The research process also drew attention to power relationships in the research, an understanding of the wider colonial and gendered history of Canada from which it emerged, and attention to methods that honoured Indigenous epistemologies and increased comfort levels for study participants. For example, both meetings with Survivors began with an Elder speaking followed by research questions posited by the community collaborator. Sitting in a circle and using the principles of a sharing circle, Survivors then responded to the questions. According to Lavallée (2009), methods like sharing circles encourage participants to identify, represent, and engage in approaches that connect cultural memory, collective history, and personal narrative.

The inquiry also included a position of engagement with Survivors, the Elders, and the community organization, and the recognition of the historically and racially constructed positions from which the research relationships emerged (Anderson, Khan, & Reimer-Kirkham, 2011). Results were shared in publications, conference presentations, and in a public meeting. In reporting the results, the terms claimants and Survivors are both used: Lawyers and IAP adjudicators often used the term "claimants," while "Survivors" was more widely applied to those who survived the tragic legacy of the schools. At least one focus group participant used the term "victims." The themes that emerged from the study and which follow here are supported by quotations from study participants. Pseudonyms are used to protect the identity of the speakers, or they are identified as FG (focus group) participants.

### **Harms, Losses, and Opportunities**

There are three main areas for compensation in the IAP model, and each of these areas is divided into levels of harms and losses. IAP claimants are compensated for specific physical or sexual abuses that they suffered in residential schools, as well as for the consequential harms of post-traumatic stress disorder, anxiety, depression, or a physically disabling injury through a point system that defines levels of abuse or harm. In addition to the abuses and consequential harms, Survivors can also be compensated for what is referred to by the IAP as "consequential loss of opportunity." According to the IRSSA's (2013) IAP website, "loss of opportunity means that you have had fewer chances (less opportunity) to become as educated/trained or as fully employed as you might have been because of the effects of the abuse you experienced at Indian Residential School" (Section 5, question 4, para. 2).



Each level of harm in the model corresponds to an economic value of compensation. Under this model, a loss of opportunity would include the chance to complete a post-secondary degree or attend training that may have advanced a career. However, female Survivors who had their children taken away by social services and put into foster care, and therefore lost the opportunity to parent due to dysfunctional behaviors that can be linked to physical or sexual abuse suffered at residential school, were not eligible for compensation in that category.

The IAP compensation model, like other Canadian legislation, does not place value on what traditionally is considered women's work—that is, the invisible, unpaid work that sustains families and communities. Women's organizations have long lamented the need to include hours of unpaid work in national accounts and the development of laws and policies. Despite the worldwide recognition Canada received when it became the first country to include “unpaid household activities” in its national census, measuring unpaid work as marginalized and Indigenous women experience it remains understudied (Armstrong & Armstrong, 2001; Hanson & Hanson, 2011). In relation to the IAP, one adjudicator similarly explained the relationship between women and unpaid work:

This process is really based on what the common law is. Traditional work such as hunting, trapping is recognized... that's easier to recognize because there is a proven history, but women's work is not. It's not different from other cases, where women's work is not valued. (Kate, Interview)

Study participants in the sharing circle focus groups offered many examples of the kinds of work they did that might be considered traditional women's work. They spoke with pride about cooking, snaring rabbits, identifying edible plants, picking berries, and so on, but they also lamented that this work was neither valued nor understood in the IAP compensation model. In this quote, one of the study participants explains:

And you guys talked about [compensation for lost education and paid] employment. The women were the nurturers, the caregivers and they're not being compensated for that. The education part of it is... like I went to school in Grade 11 and I got my Grade 12 later on in years. I got my university way later on. They never took that into consideration... so I lost out back over here when I was raising my kids and I didn't have the education. So they didn't even look at that at all. (Saskatoon FG participant)

Many of the participants also shared personal stories in relation to how their experiences in residential school affected their ability to parent, and the negative intergenerational impacts that followed. Here are two examples from Survivors who participated in the study:

We came out of residential school with all this shame and guilt and everything. I held *it* in for so many years—that's how I lived. Like her [pointing to another focus group participant], I turned to alcohol and intravenous drugs. You know, it was horrible. (Regina FG participant)

I know when I finished residential school after year [i.e., age] 16 I was full of anger and bitterness. When I started having my children, I turned to alcohol. I didn't know what love was all about. Now I can hug and love my children, but then I couldn't hug them at all. We didn't even like ourselves, you know. For me, I didn't like myself one bit. (Regina FG participant)

While housework and caring for children and the elderly is not solely defined as women's work, the reality is that the majority of unpaid work in the home is still done by women (Hanson & Hanson, 2011; Milan,

Keown & Robles Urquijo, 2011). This unpaid work is not only unrecognized in the IAP model, but costs associated with it are also not reimbursable to Indian Residential School Survivors who attend an IAP hearing. For example, Survivors are reimbursed for expenses incurred in order to attend an IAP hearing, including travel costs, food, and support persons, but despite the fact that several study participants remarked that within their families they are the primary caregivers for their grandchildren, childcare expenses are not reimbursable when they attend IAP hearings. Consequently, the IAP as a compensation model continues to devalue women's work and experiences. Ironically, while the Indian Residential School system trained Aboriginal girls to work as domestics (Million, 2000), this work was not recognized as having value in the IAP compensation model. Similarly, the IAP model used colonial constructions of sex and sexuality to define abuse by treating the male body as the norm. Using a postcolonial research position, this brings into question why the IAP, as a negotiated settlement agreement, failed to address serious issues of power and abuse, most obviously the impacts of colonialism and conceptions of sexual abuse.

### **The Female Body, Sexuality, and Assault**

A review of the IAP forms and documents that were part of the data collection suggested that in many descriptions of sexual abuse the typical body is characterized as male (for example, breasts are not mentioned) and the wrongful acts (language in the model) describe anal or vaginal intercourse or penetration as the highest levels of harm. Moreover, anal or vaginal penetration with an object is considered to be more harmful than both digital penetration and oral intercourse. These descriptions are also used to determine the amount of compensation, if any, to be awarded to an IAP claimant (Indian Residential Schools Adjudication Secretariat, n.d.). By privileging the male body and penetration as the norm in defining sexual abuses, many harms and abuses experienced by female Survivors are discounted, such as female-on-female abuse, oral intercourse, and digital penetration. An emphasis on hetero-normative sexual relations is also apparent in these descriptions emphasizing, yet again, the privileging of dominant (colonial) narratives (Bruzny, 2011; Foucault, 1978; Yep, 2003).

While taking part in study interviews, two of the IAP adjudicators, Sadie and Railie, shared biases against women they observed during their experiences at IAP hearings when compensation for sexual abuses was being determined. Railie noted that the IAP descriptors for sexual abuse make it more difficult for women to qualify for compensation. According to Railie:

The reason that most women don't qualify for that [compensation] is that it has to be anal or vaginal intercourse, which is impossible for two girls together, or situations of anal or vaginal intercourse with an object, that's also very rare. It could happen but it's also very rare. Most of the time it will be digital penetration, which is easier because you don't have to get an object or oral sex or masturbation. (Interview)

In the IAP model violence is viewed as direct and physical, and sexual abuse is measured by privileging the male body with penetration as a norm. The word breast is not even mentioned in the model. This also presupposes and ignores the perpetuation of female-on-female violence and abuse. Sadie, an IAP adjudicator, further described the IAP compensation model as missing key understandings about female-on-female abuse.

The other problem is that some of the model comes out of our understanding of abuse by male pedophiles which is about sexual gratification . . . I don't think female pedophiles or women who

abuse sexually are well understood and haven't been incorporated into the model. (Sadie, Interview)

Sadie described the ambiguity that accompanies attempted anal or vaginal penetration, and how abuses are overlooked when the emphasis for sexual abuse is on penetration. She began by stating what the model reads:

*One or more incidents of attempted anal or vaginal penetration* [reading from the IAP model]. It excluded digital penetration. So attempting to penetrate vaginally or anally was not included. But what is interesting is when is an attempt proven? An attempted penetration? How far or how close to when that is happening do you have to be to prove [it]? So some of the traditional views on how a rape might be occurring, like pants removed or stuff like that, you can have a narrow interpretation come out [where] there might have been an attempted rape, but it is the penetration that's the object of that section [of the model]. The actual penetration matters, not the precursor to it. I'm not saying that if it was defined differently that we wouldn't have had difficulty applying it, but I think that's definitely very much a male model of the penetration being the sexual act or assault, [and] not something that could come before it. (Sadie, Interview)

The IAP's interpretation of what constitutes sexual assault was also questioned by some of the IAP adjudicators who were interviewed for this study. Some adjudicators expressed concerns in relation to the steps or levels that the model used to describe sexual assault, such as this example:

They didn't just say "sexual assault" and let the adjudicators decide it was a sexual assault based on 1, 2, 3, 4 steps, right? They didn't do that because they had to create a chart that differentiated different sexual acts. The law doesn't do that. The damages, or the outcome, comes as a determination by the judge after determining sexual assault has occurred. In this case, because they tried to create the chart . . . I suspect, [to create] more uniformity in people's compensation. But by that, you're creating a model that doesn't exist in the law and I think it needed more thought and conversation about sexual acts. (Sadie, Interview)

There were also concerns expressed about how the process had in some ways gone from being one concerned with reconciliation to one that was more adversarial in nature. One adjudicator stated that:

Although it was intended to be a process that didn't mirror the courts, [it] ended up being a process that is, primarily because [legal] Counsel has made it this way. (Kate, Interview)

Other concerns that came up during study interviews were related to the diverse ways in which different cultures and languages describe sexual assault. For example, more than one adjudicator mentioned that a northern Cree woman might have more difficulty describing sexual assault than a woman of Mohawk or Blackfoot ancestry because of her exposure to dominant cultural ideas. Comfort in describing sexuality was considered important. The adjudicators felt that specific cultural analysis might be useful, but the need for a skilled adjudicator and strong interpreter could not be overlooked.

## Child Abuse, Power, and Trauma

Many study participants were critical of the way the IAP model seemed to interrogate memories from childhood experiences that were associated with trauma. Survivors often spoke about feeling violated yet again during the IAP hearings. Lawyers and adjudicators were critical of this process for several reasons: one of which was that of power and control.

So what we're seeing, the parts of the model I struggle with when I have to apply them [is] definitions of words. We're supposed to use the plain and simple meaning of a word but *fondling* [emphasis added] is the best example: fondling cannot mean a gentle caress only. I've said that the model does require a contextual approach. The context is sexual abuse. Sexual abuse is about power and control, therefore fondling can't simply be a caressing touch. I've found that it can be a very rough grabbing, or punching, it could be a harsh action toward genitals [goes on to describe a student being washed with a wire brush]. (Sadie, Interview)

There were other ways in which power was exercised and understood in the IAP adjudication process. One focus group participant described power in relation to the traditional role of Aboriginal women when she said:

We were teachers and the residential school took that away from us . . . we lost all that power, you know. We had more power before, and they took that away from us. (FG participant)

Several adjudicators and Survivors in the study mentioned that some lawyers, health support workers, and adjudicators exercised too much power over Survivors during hearings. During the focus groups, several participants alluded to the ways in which they were treated by lawyers and the Government of Canada's legal counsel, with greatly varying experiences. An IAP adjudicator who participated in the study also voiced several questions in relation to power and control that seemed relevant to points raised by other study participants. She asked:

How are power, racism and sexism played out? How were lawyers and adjudicators selected and trained? How are supports set up and by whom? (Raina, Interview)

One IAP adjudicator said she is even careful about what she wears and that she does not sit across the table—that is, in a position of confrontation—from the claimant. Such practices of power, however, were unlikely to be part of an IAP adjudicators' training and, consequently, would only be observed among adjudicators who are conscientious about how sexism and issues of power get played out in such contexts.

IAP adjudicators who participated in the study also expressed concern about how lawyers or Canada's counsel understood child development, childhood trauma, and the relationship between trauma and memory. Consequently, as one participant stated:

It doesn't seem to me that some of the lawyers who are there as part of the reconciliation process understand the basic development of a child. So it becomes more adversarial than reconciliatory. (Pat, Interview)

Many of the study participants were critical of the way in which adult Survivors were interrogated about their experiences of abuse as children. Some felt the process exceeded what would be asked in the court system. Study participants shared the following examples:

On top of that, you take these really young children, and you add to that all the trauma. Like just the trauma of being taken away from their family, scared all the time, all the bullying they went through, all the psychological . . . to put the sexual abuse on top of that, trauma can affect your memory, your ability to see what's happening around you, and also when people go into a big trauma like that, some clients would say "I was like drunk" you know? Because your body has an adrenaline rush, and your mind is not there, and I know because I've had that in my life. I've had situations like that when big traumas . . . I try to go back there but I can't remember, and I was an adult. You don't remember everything. So, unfortunately sometimes in the process, adjudicators do not have the background to work in these files. Some of the adjudicators who have done, for example, work in corporate law, or they worked maybe with Native groups, but not necessarily sexual abuse, children's sexual abuse. Sometimes they don't have that information. And they are given some training, but I think it's only a few days. So you have these adjudicators who are looking into the process very mathematically, which is really not appropriate for these kinds of files. And also, they will ask a lot of questions. It's impossible for that person to remember what you're asking them to remember. (Raina, Interview)

Well let's say you have a five-year-old child who says that she was sexually abused by a supervisor and then the lawyer for Canada wants specifics, you know. They want to know exact numbers, they want to know very minute details. Whereas a child of that age, never mind the fact that this is 65 years later, a child of that age would have difficulty even responding to those kinds of questions. (Pat, Interview)

Although both male and female Survivors were questioned about details related to trauma they experienced and memories from their childhoods, the study demonstrated differences in the ways that issues of control and power are experienced in the lives of vulnerable women. As one adjudicator stated:

If the person's not able to tell their story in a safe way, or comfortably, because of all these dynamics, it's going to impact the level of compensation that they get because they can't tell their story. (Pat, Interview)

Adjudicators were especially critical of lawyers or representatives for the Government of Canada who listened to the experiences of Survivors and then made comments along the lines of:

It's not possible because my son is the same age and he would never do that. (Liz, Interview)

Survivors who were interviewed also explained how adjudicators sometimes made them relive a trauma. Here is one example:

Yeah, there was others there, but the adjudicator began to feel that she was like a prosecutor. It was like, over and over again, and asking me, and I began to see, I was starting to see what was, I could see what was happening to me. Like I could see this person, what was happening, and then she [the adjudicator] just kept asking me over and over again about that. About incidents that happened in school. (Saskatoon FG participant)

While the IAP compensation model was designed to exclude the personal opinions of those overseeing the process, several adjudicators felt that such a model was not always followed. In the context of vulnerable populations, this is particularly problematic. Several Survivors made requests for female adjudicators or Aboriginal lawyers, but there were mixed sentiments from study participants about whether this made a notable difference. Moreover, many of the study participants believed that Survivors' experiences during this process depended upon whether or not they felt that those involved in the process believed their stories of abuse.

### **Believers, Supporters, and Healing**

The Survivors in the focus groups who felt that the IAP process had been one of healing acknowledged that being able to tell their stories and feeling as if they were believed in the process was indeed a therapeutic experience. These Survivors stated that supports in their families and communities and feeling supported by their lawyers (and adjudicators) did make a difference. Some of the Survivors were very grateful because the process helped them vocalize experiences that were very painful; they expressed that their personal feelings of shame and guilt were lessened when they were able to express what had happened to them in residential schools. Furthermore, several also acknowledged that it was the first time they had ever told these stories. Participants viewed this as an important component in lessening the intergenerational effects of residential school. One of the Survivors explained this in the following quote:

Well, being able to bring it [i.e., the abuse] out for the *first* time in my life about what happened to me when I was 8, 9 years old . . . It was a, it was, it was healing for me because all these years I've kept it inside. I *never* ever told anyone, my first husband, my second husband, my family. And then, after that, I started talking about what I experienced with my family. It was the first time they'd ever heard about what I went through . . . they kept hearing—they were starting to hear—but they didn't know. They didn't understand. And because both my parents also went to residential school, my mom was very strict. You know, she never hugged. Never. Even when she was in her late eighties—she still shrunk back when I tried to hug her. And so, I didn't do that with my children when they were younger. Now every time I see them, you know, we're more open to that, and that's how far we've come. Yeah, it did open up . . . for me. (FG participant)

A health support worker, based on her experience supporting claimants, offered the following observation:

I think that they, (the adjudicators, Government of Canada, lawyers) for this process, maybe they need to get educated a little more about the Survivors' feelings . . . There are a few Aboriginal adjudicators and they're excellent, so that makes a big difference. And I can tell the claimant lawyer you're fortunate today, you know, you're gonna have an easy hearing. Like she was saying, there's some adjudicators that will ask you a question over and over again cause I've had one claimant that got up and said that's it, you don't want to believe me. You know, he was swearing . . . So there *is* a difference with the adjudicators. Some of them need to, I don't know what they need—to let them know they're not in the court. (FG Participant).

At least two adjudicators commended the way the IAP attempted to resolve the claims in a less adversarial manner than the court system. In practice, however, it was not clear whether this was actually achieved. Although feelings of being believed and supported did not always have a clear gender difference in the

process, the frequency with which study participants mentioned it was significant in regards to reaching the IAP's goals of encouraging healing and reconciliation.

### Concluding Remarks

The findings of the Who Benefits study support the idea that avoiding the errors of Canada's colonial history in the present means attending to issues of gender equality, and how Aboriginal cultures and histories are lived and experienced. Given the recent conclusion of the TRC, the release of its recommendations (TRC, 2015) and the impending publication of its final report in 2016, demands for a national inquiry into missing and murdered Aboriginal women in Canada, and outstanding cries for justice to address the Sixties Scoop cases (massive state-supported adoptions of Aboriginal children to non-Aboriginal homes), this message retains its urgency and relevancy. Specifically, this study highlights elements of the IAP model that can influence other models in the future.

Future compensatory models for similar abuses should restructure how harms, losses, and consequential losses of opportunity are defined and compensated. First, an acknowledgement of the socially constructed and colonial position of Aboriginal women and unpaid work would be valuable. Second, future models could develop a more inclusive understanding of the representations of the body and sexuality in order to ensure that multiple perspectives are represented. For example, privileging the able-bodied, male body as the typical body that receives abuse and using penetration as the primary norm by which to determine the occurrence of sexual assault does not adequately address the multiple ways in which sexual abuse is perpetrated and experienced. Third, compensation must address the lasting impacts of child abuse and trauma, including a wider acknowledgement that even though the claims process is currently dealing with adults, the experiences of abuse are constructed from memories during childhood and are often associated with trauma. As such, professionals who deal with trauma and child abuse and child development might assist in informing this process. Additional research into how this process is experienced is also recommended. Fourth, a healthy policy would address how issues of power and control are practiced historically and within different dimensions of socio-cultural identity, and advocate for healing strategies that are founded on believing and supporting those who are impacted by abuse. Training for legal counsel, for example, could include ensuring that traditional methods of healing are recognized so that in the development of future care plans attending a sweat lodge ceremony, for example, would be considered a legitimate process of healing. Study findings also suggest that though the training and selection of legal counsel, adjudicators, and others involved in the process is critical, so too is it critical to involve the perspectives of professionals working on child abuse cases who are familiar with issues of interlocking oppressions, such as race, culture, and gender inequality. The indigeneity-grounded framework discussed by Feras and Maaka (2010) may support such culture-specific and Indigenous understandings around policy development. Additionally, compensation practices should be developed with the involvement of all stakeholders, including Survivors, so that they might be more reflective of lived reality. Finally, other models of reconciliation—such as those suggested by Llewellyn (2002, 2008)—might be considered. Although the IAP model of compensation is nearing its completion in Canada, the examples provided from this study demonstrate how future policies, programs, and compensatory models can move toward more reconciliatory methods and, ultimately, toward healing practices for Survivors.

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