Basic legal information for on-reserve women's shelters

Canadian domestic homicide prevention conference

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7 parts to my talk:
1. Introduction
2. The right to live free from violence
3. Historical and social context
4. Key aspects of addressing violence against Indigenous women
5. Legal tools for Indigenous women's safety
6. Legal protections for Indigenous women's well-being, and escaping violence
7. Recommendations to shelters and transition houses

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1. Introduction

The word "victim":
Refers to "a person who has experienced, or is experiencing 'IPV' or 'DV'"
"Victim" is <u>not</u> the best word to use – not meant to imply that the core identity of a person is as an "IPV or DV victim"
We all have many, fluid identities throughout our lives, through our various positions, our relationships, what we participate and believe in, etc.

<u>*We caution*</u> that only persons who are lawyers should be providing legal advice.

Shelter workers can provide only legal information, not legal advice, to the women in shelters.

*There is a too-popular view that only women are IPV victims, whereas they are also men and children.

The National Aboriginal Circle Against Family Violence (NACAFV) represents on-reserve shelters.

All these shelters are for women and children so we have taken the perspective of DV being against a woman. There is an on-reserve shelter being built now, in Wikwemikong, that will have a component for men. This is a first among on-reserve shelters in Canada.

2. The right to live free from violence

This right is
- affirmed in Indigenous peoples' laws and traditions
- protected in Canadian law through the CCC (federal), and in provincial and territorial laws, including family law and policing acts

Division for Social Policy and Development
Indigenous Peoples

- *UNDRIP says that: "States shall take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination" *Article 22(2).*

In Canada, there is specific national legislation on the rights of victims of crime*. There are protections that can help women and children in securing the assistance they need to get away from violent situations in the home, and to ensure their safety.

3. Historical and social context

This topic is very important for shelter workers, and for all of us. Everyone should understand this: how it has happened that the Indigenous peoples have come to live in violence within their own homes.

How is it that the law of the land has such an devastating impact on Indigenous peoples' lives?

Supreme Court of Canada
Cour suprême du Canada
Canada

Literature identifies the underlying cause of DV in Indigenous communities as *colonialism.*

What do we mean by COLONIALISM?

*SUMMARY***: Franz Fanon, renowned psychiatrist and philosopher, said that colonialism not only wants to keep "people in its grip", but by "a perverted logic, turns to the past of the oppressed people and distorts, disfigures, and destroys it".**

The framework on this part of my talk uses "The 5 Stages of Colonialism".

It is adapted from the University of Saskatchewan's *Indigenous Voices Program***.**

5 Stages of the Colonial Encounter

Steady State

First Encounter

Decolon-ization

Colonial Relations

Internalized Colonialism

We will start at the circle marked with the red star, "Steady state".

Stage 1: _Steady state_

- **Strong traditional worldviews, philosophies, spirituality**
- **Indigenous laws and customs maintain social cohesion in families, communities**
- **Family structures are in balance and healthy; communities are autonomous and self-sufficient**

- **Equal access to human, spiritual and environmental resources**
- **Territorial use is negotiated within the FN, and with other FNs**

- **Land and resources are held collectively, in common**

Stage 2: _First encounter_

- **Newcomers, by necessity, include the Indigenous peoples in the market system that they have created and brought with them to the "New World"**

- **Indigenous people become increasingly dependent on commodities from overseas which propels them, unequally, deeper into the colonialist economy**

- **…. pre-contact inter-FN relationships keep declining b/c of competition for resources and the desire for increased access to European commodities….inter-FN confrontations increase dramatically**

….especially as the First Nations start increasing production for trade (e.g., hunting, trapping); this also places new and excessive demands on the environment and its resources

The traditional Indigenous philosophical and spiritual relationships with the environment start to change because of having to fit into a new, ever-expanding economic system. Colonialist politics begins to halt the growth/ expansion of Indigenous traditions.

New social relationships are formed through trade, intermarriage, and prolonged contact.

*The traditional gender roles in pre-contact Indigenous cultures were balanced and stable; they provided women with safety, and powerful places within society.

Even in the patrilineal groups where men held political office, women were still honoured and highly esteemed. Their work was life-sustaining and essential for the survival of the whole nation, and for their places as mothers, grandmothers, wives, aunts and sisters.

Many pre-Contact Indigenous societies were both matrilocal and matrilineal; they ensured the maintenance and continuation of women's authority and legitimate place. In these cultures, a husband joined his wife's family and yielded to its authority. This social arrangement effectively prevented him from excesses in authority and domination over his wife and children.

The First Peoples believed that the Creator gave women special and sacred gifts in their roles as life-givers and caretakers of life, and as mothers and wives. They knew that everything, including gender gifts and roles, were bestowed by the Creator. Gender complementarity in pre-Contact times was accepted as the voice of Creation. While their roles and responsibilities were different, women were not considered better or more important than men, nor vice versa.

The fulfillment of both roles together held a balanced interrelationship that was necessary for meeting both the economic livelihood, and spiritual needs of the entire nation. These understandings were a continuing source of strength and peace within families in Indigenous societies.

But over time, as colonization became entrenched,
- extreme devastation of culture, including community, family and home structures

- foreign diseases that were introduced into Indigenous groups meant drastically declining populations (30% - 90%)
- the ones who succumbed first were the future (the children), and the past (the Elders)
- for those who were left, there is great loss, guilt, demoralization, self-blame
- this began the loss of the sense of safety within the community, and even within the family unit

Stage 3: *Colonial relations*

The FNs become displaced as colonial demand for "good land" increases so settlers can "have" it.

- An economic shift from trade to agriculture means the value of Indigenous labour and skills keeps decreasing.
- Non-Indigenous – Indigenous relationships shift from inter-dependence to one of: non-Indigenous domination and Indigenous subordination.
- Colonial "ways-of-doing" are imposed as more and more Europeans come over, and their settlement on FN lands increases.

- Indigenous peoples are seen as "obstacles to progress and settlement" by those who are Canada-building.

- Racialization theories lead to racist activities: to justify the land-grabbing of colonialism.

So, what is "racism"?

According to Memmi (2000), racism happens in 4 "moments". These are deliberate, and timed; they occur in "a package" to create oppression–this oppression is called racism.

#1:   There is an acknowledgement that a "difference" exists between persons or groups.

#2:   Negative value judgments are imposed on persons/ groups who bear or manifest certain characteristics. They are deemed to be "different". At the same time, a positive valuation is given to the corresponding characteristics by the one(s) giving the judgment.

#3:   The "difference" and the value given to an individual are generalized to the entire group, which is then depreciated and perceived institutionally as "less than".

#4:   The negative value imposed on the one group becomes the justification and legitimatization for hostility and aggression against them. They become excluded from the good things offered by what is now the dominant group.

The colonizers created the "Indian problem"; their solution has been assimilation and/or extinction (genocide).

- **New religion: it is used as a foundation and justification for political, social and economic domination**

- **Churches, missionaries are mobilized to entrench EuroCanadian ideals, values and practices into FN societies**

- **Accumulation of goods, private property (*fee simple*—land can be bought and sold) are highly valued**
- **New family structures are imposed: they're patriarchal (male-centered), hierarchical (some more "important" than others), and individualism abounds (not collective)**
- **The imposition of European gender norms was central to the assimilation programs of both the English and French.**

Gender roles change: they were based on white settler perspectives and a British or French identity. Principles were promoted, enforced:

- **The concept of male superiority and female inferiority – a model of their own traditions, from their home countries**
- **The clergy and others in high social standing increasingly frowned on, and spoke out against interracial marriage**
- **Regarding "country marriages", they spread theories about Indigenous women being promiscuous—easily available, in a sexual sense**

Colonial powers institutionalized the relationships of marriage and property, incl. patriarchal appointment and normalcy of male dominance.

Men were authorities over their wives, children and households. We still see this today as the "norm".

- After colonial administration, Canada—the federal government—legislates its European ideals, values and practices; e.g., the *Indian Act*
- This brought outside political and social control over the FNs; it confined FNs to reserves – poor land for agriculture, isolated
- FNs' community life is almost totally disempowered
- Residential schools are imposed: violence against the Indigenous students abounds within these schools

- **Traditional FN economies, social structures collapse**
- **Spiritual practices, when they do exist, go "underground"**
- **Low-quality education—as racism is institutionalized in education – still evident in many ways, such as the chronically-underfunded reserve school system of today, and of contemporary on-reserve women's shelters**

Entrenched, firmly-rooted racialization denies Indigenous peoples equal access and opportunity to goods and services.

- The state of dependence, subordination and demoralization is the rule, not the exception.
- A massive and dehumanizing social service industry is created to "deal with" Indigenous peoples. We still see this.
- Environmental exploitation and destruction.
- Economic marginalization – high unemployment.

Stage 4: *Internalized colonization*

The result is socio-cultural chaos—leadership cannot be the leadership as it was from the past days.

These are some outcomes of internalized colonialism:
- Families are in disarray and experience estrangement, there are splits in inter-familial relationships
- Family violence, spousal battery
- Child abuse and neglect
- Child abandonment, children in state care
- Sexual assault, incest

Poor housing, over-crowdedness, impoverishment

- A lot of alienation resulting in loneliness, poor sense of belonging
- Trying to fit into "two cultures"; trying to "make it" – some just give up trying
- Lateral violence; lack of support within the family and community
- Trying to cope with racism is tiring, depressing and stressful
- These facilitate low self-esteem/confidence, self-hate, feelings of inferiority, apathy and lethargy, hopelessness, increased health problems, i.e., psychological & mental disorders

Resulting in: Violent crimes, high prison populations
- Social assistance dependency
- Chemical dependence, substance abuse & mis-use
- High suicide rates
- Low education levels

The above symptoms are repeated generationally, but more and more, each generation is learning how to work better, and become more self-aware in tackling these issues from a "root cause" standpoint.

Stage 5, *Decolonization*

- **Individual rejection of victimization; looks for empowerment**
- **Finds appropriate tools, such as schooling, strong life-skills—this means the oppressed is challenging the oppression / the oppressor**
- **Resistance in direct and indirect ways**
- **Reclaims languages, culture, spirituality, ceremonies and communities**

Individuals know they need to recover their senses of

- self-perception, self-awareness
- personal power
- integrity, self-esteem, believing in oneself
- possibility of hopefulness, optimism
- connection and belongingness
- self-protection, autonomy
- spirituality and faith

- **Culture, and personal identity within their cultures**

When we, as individuals and communities, can overcome things we have inherited, we are overcoming colonialism, and everything that comes along with it, such as family violence and family dysfunction.

Understanding how DV came to be so deeply embedded in our communities, through colonialism, is <u>very important</u>. One of the main reasons that I found for this is that a strong understanding takes away the self-blame that DV victims often feel. For too long, they blame themselves for not being good enough, not smart enough, not beautiful/handsome enough, not ….. The list of perceived inadequacies goes on and on.

When DV victims see themselves as a result of the *system of colonialism* that was foisted onto them, and through no fault of their own, they begin to see the road to freedom and self-realization.

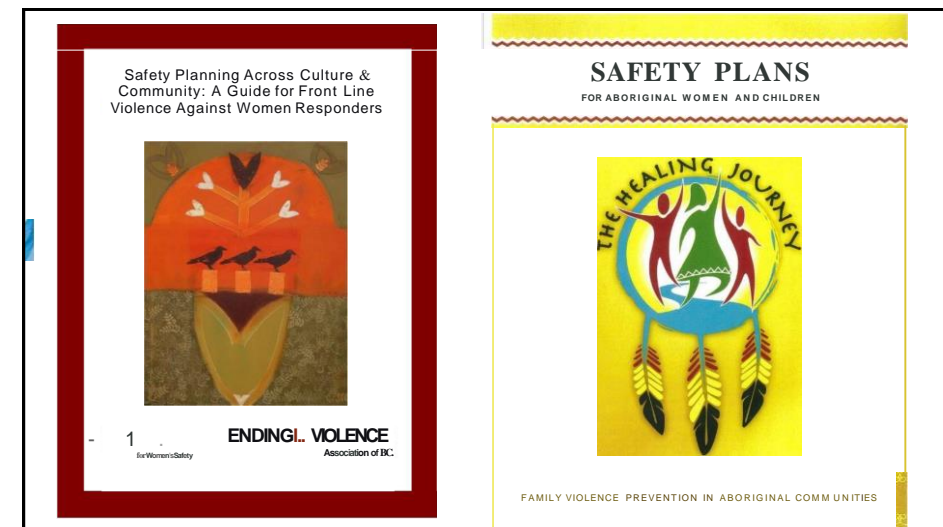*4. Key aspects of addressing violence against Indigenous women*

Part 1: Clients' human rights and service provider responsibilities. Topic areas are

- Conflict of interest (e.g., can exist if a client is bringing a legal complaint against the relative of a shelter worker)
- Informed consent – can never be implicit
- Confidentiality and disclosure – client's right to privacy; shelter must disclose certain information

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- Recording information (e.g., listing of dates and times that a client has been in contact with the shelter, critical incidents)
- Health-related rights (e.g., about HIV status)
- Policies and procedures—must be known to all shelter staff, and all updates
- Discrimination, harassment and the shelter environment—on-reserve shelters are subject to the *Cdn. Human Rights Act*, or a FN government may have jurisdiction if under a self-government agreement.

Part 2: Making shelters and transition houses accessible for everyone, including for clients with disabilities: A checklist
- Personal care, interpreter, hearing impairment, visual/ intellectual/ disabilities, mental illness
- Safety plans for women and children
  --planning ahead, what are essential items
  --preparing for emergencies
  --community safety plans
  --level entrances into the shelter
- Right to accompaniment (to doctors, court, etc.)
- Pro bono lawyers

Safety Planning Across Culture & Community: A Guide for Front Line Violence Against Women Responders

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ENDING VIOLENCE
for Women's Safety
Association of BC

SAFETY PLANS
FOR ABORIGINAL WOMEN AND CHILDREN

THE HEALING JOURNEY

FAMILY VIOLENCE PREVENTION IN ABORIGINAL COMMUNITIES

5. Legal tools for Indigenous women's safety

- **Protective orders, How to get one**
- **Laying charges**
- **Specific protections against stalking and cyber-bullying**
- **Safety of women in the sex trade**
- **Police responsibilities**
- **Obtaining a pardon**

6. Legal protections for Indigenous women's well-being and escaping violence

- **MRP**
- **Understanding status under the *Indian Act***
- **Family Law**
- **Divorce (includes Common-law relationships, Spousal support, Child custody, Access and support, and Division of property)**
- **Non-Discrimination and provincial, territorial and federal human rights**
- **Employment rights**
- **Navigating the child welfare system**
- **Navigating the income assistance system**
- **Housing rights**

7. Recommendations to shelters and transition houses

These are grouped into 3 areas:

1. Providing effective supports
E.g., staff should maintain a list of local lawyers who provide *pro bono* services, and of Indigenous lawyers, particularly female Indigenous lawyers.

2. Cultural safety
E.g., SDs are encouraged to share experiences and Best Practices with their shelter counterparts, and other supportive organizations so they can maximize services

3. Physically accessible shelters/transition houses for persons with disabilities
E.g., ramps for wheelchair users, wide doorways, appropriate additions to bathrooms, etc.

For all those reading NACAFV's Legal Manual, remember that We are all meant, by the Creator and all Creation, to fly like the eagles!

Meegwetch!
Thank you!