# Impacts of the TRC and ALRC Reports on Indigenous Correctional Programming and Services: A cross-country comparison of Canada and Australia

by

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A thesis submitted to the
School of Graduate and Postdoctoral Studies in partial
fulfillment of the requirements for the degree of

**Master of Arts in Criminology**

Faculty of Social Science and Humanities

University of Ontario Institute of Technology (Ontario Tech University)

Oshawa, Ontario, Canada

September 2020

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## THESIS EXAMINATION INFORMATION

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**Master of Arts** in **Criminology**

| Thesis title: Impacts of the TRC and ALRC Reports on Indigenous Correctional Programming and Services: A cross-country comparison of Canada and Australia |
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The above committee determined that the thesis is acceptable in form and content and that a satisfactory knowledge of the field covered by the thesis was demonstrated by the candidate during an oral examination. A signed copy of the Certificate of Approval is available from the School of Graduate and Postdoctoral Studies.

## ABSTRACT

Indigenous peoples have been overrepresented in the Canadian and Australian criminal justice systems for decades. Commissions were established in both of the commonwealth countries, which produced reports addressing the history of colonization and overrepresentation in the justice system. The reports included calls to action and recommendations to reconcile relationships with the Indigenous populations and improve their wellbeing. This thesis compared the government responses of the Canadian provinces and the Australian state and territory with the highest levels of Indigenous overrepresentation in the correctional system, focusing on correctional programs and services. Publicly available, secondary data was collected and analyzed. Results showed that the level of accountability and action taken in response to the national inquiries varied both within and between countries, from a direct response to an absence thereof. This study can provide insight and direction for best practices in responding to both national inquiries, and the needs of Indigenous prisoners.

**Keywords:** Indigenous; corrections; overrepresentation; reconciliation

**AUTHOR'S DECLARATION**

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## STATEMENT OF CONTRIBUTIONS

I hereby certify that I am the sole author of this thesis and that no part of this thesis has been published or submitted for publication. I have used standard referencing practices to acknowledge ideas, research techniques, or other materials that belong to others. Furthermore, I hereby certify that I am the sole source of the creative works and/or inventive knowledge described in this thesis.

**ACKNOWLEDGEMENTS**

To my supervisor, Dr. Carla Cesaroni. I cannot thank you enough for the support, guidance, inspiration, and opportunity that you have provided me with during my time at Ontario Tech. It has been an honour to learn from you and work under your supervision. A very special thank you to my committee member, Dr. Karla Dhungana-Sainju, for your support and dedication in many aspects of my Masters studies; including my own research and my work with the Criminology Graduate Student Association. Your time, effort, and guidance are very much appreciated. Dr. Cesaroni and Dr. Dhungana-Sainju, thank you for helping me to set and achieve each of my goals, and for pushing me to produce work that I take great pride in, words cannot express my appreciation.

Thank you to my classmates: Lawrence, Nicole, Riley, and Simone. It has been great to collaborate with, and learn from, each of you over the past two years. I am grateful to have had such good people to relate to and rely on through these equally challenging and rewarding times. I wish you all the best in your future endeavors!

Endless thanks to my mom, dad, brother, grandparents and extended family for your ongoing support and encouragement throughout my post-secondary studies. Thank you for taking great interest in the work that I have completed, and for checking in with me throughout my studies. To my boyfriend, thank you for keeping me focused, motivated, and encouraged; your support means the world. I would not be here without each and every one of you, and I hope that I have made all of you proud!

To my best friends, thank you for being there when it was time to buckle down and when it was time to celebrate, I am both lucky and thankful to have you.

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## LIST OF ABBREVIATIONS AND SYMBOLS

| | |
|---|---|
| ABS | Australian Bureau of Statistics |
| ALRC | Australian Law Reform Commission |
| ALSWA | Aboriginal Legal Service of Western Australia |
| B.C. | British Columbia |
| CCRA | Corrections and Conditional Release Act |
| CSC | Correctional Service of Canada |
| IRS | Indian Residential School |
| NDP | New Democratic Party |
| NSW | New South Wales |
| NZ | New Zealand |
| OCI | Office of the Correctional Investigator |
| PEI | Prince Edward Island |
| PTSD | Post-Traumatic Stress Disorder |
| RCMP | Royal Canadian Mounted Police |
| SCC | Supreme Court of Canada |
| TRC | Truth and Reconciliation Canada |
| WKRP | West Kimberley Regional Prison |

# Chapter 1: Introduction

## Introduction to Overrepresentation

The overrepresentation of Indigenous people in the Canadian and Australian criminal justice systems is an issue that has been widely acknowledged, both within the field of academia and the general public (Roberts & Melchers, 2003). The issue of overrepresentation, and the magnitude of it, challenges the legitimacy of the criminal justice systems in both Canada and Australia. As of 1999, the overrepresentation of Indigenous individuals within the Canadian criminal justice system had reached such a magnitude that the Supreme Court of Canada [SCC] reported that it may be appropriately referred to as a crisis within the justice system (R v Gladue, 1999, para. 64). More recently, the Office of the Correctional Investigator (OCI), in its 2016-2017 annual report, stated: "The year-on-year increase in the over-representation of Indigenous people in Canadian jails and prisons is among this country's most pressing social justice and human rights issues" (Office of the Correctional Investigator [OCI], 2017, p.6).

In their executive summary, Truth and Reconciliation Canada, hereafter referred to as TRC, reported that in 1995-1996, Indigenous people accounted for 16 percent of all offenders who received a custodial sentence in Canada (Truth and Reconciliation Canada [TRC], 2015). The TRC (2015) went on to report that by 2011-2012, Indigenous people accounted for 28 percent of offenders sentenced to custody in Canada, significantly higher than the 4 percent of the total Canadian population constituted by Indigenous peoples. More recent figures published by Statistics Canada (Malakieh, 2019) maintain that the issue of overrepresentation is one that continues to increase in severity over time.

While Canada may face its unique challenges in regards to Indigenous overrepresentation in the criminal justice system, it is not the only Western country that experiences high levels of Indigenous overrepresentation. Overrepresentation of Indigenous people within the criminal justice system has been observed in the commonwealth country of Australia, and specifically within its state and territorial correctional systems (Australian Law Reform Commission [ALRC], 2017b). The overrepresentation rates of Aboriginal and Torres Strait Islander people in the Australian criminal justice system have increased to the extent that overrepresentation was referred to as a "national tragedy" by the former Attorney-General of Australia (ALRC, 2017b, p. 37). The level of overrepresentation of Aboriginal and Torres Strait Islander people in custody in Australia prompted the Australian Law Reform Commission, hereafter referred to as ALRC, to conduct an inquiry into the incarceration rates of the Indigenous peoples. Australia experienced a 41 percent increase in the incarceration rate of Indigenous people from 2006 to 2016 (ALRC, 2017b). In 2018, the Australian Bureau of Statistics, hereafter referred to as ABS (2018b), reported that Aboriginal and Torres Strait Islander people made up approximately 2 percent of the total Australian population aged eighteen and above while accounting for 28 percent of the Australian prison population.

In both of the aforementioned countries, the arrival of colonial settlers had many negative impacts on the Indigenous peoples, "including the loss of land, social, economic, and political marginalization, and the contemporary phenomenon of overrepresentation in criminal justice systems" (Havemann as cited in Cunneen, 2014, p. 386). Another devastating impact of colonization on the Indigenous peoples of Canada and Australia was the forcible removal of Indigenous children from their families and communities, and

placement in residential and mission schools. The children were removed with the intent to strip them of their Indigenous identities and enforce a ‘civilized’, Christian way of life (Bull & Alia, 2004; National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families [Australia], 1997; TRC, 2015). Settlers also brought with them numerous diseases to which Indigenous peoples had not previously been exposed and therefore had no immunity to (Macdonald & Steenbeek, 2015). Crowded residential schools in Canada left Indigenous children and youth at increased risk of contracting and spreading diseases (TRC, 2015).

The impacts of colonization have been found to have lasting intergenerational effects within Indigenous families and their communities, such as the continued overrepresentation of Indigenous children in out-of-home care (ALRC, 2017b; TRC, 2015), and has also resulted in collective trauma amongst Indigenous groups (Bombay, Matheson, & Anisman, 2014). Numerous socio-economic factors, which will be discussed in-depth in the literature review, as well as the young age of the Indigenous population, have been identified as contributing factors of Indigenous overrepresentation within the criminal justice systems in Canada (Perreault, 2009) and Australia (ALRC, 2017b).

Colonization has had direct impacts on the social, economic, and political lives of Indigenous peoples in Canada and Australia, while also indirectly impacting them through the imposition of criminal justice systems based on common law. Upon their arrival, English settlers deemed Indigenous law to be both “customary”, and inferior to their colonial law (Cunneen, 2014, p. 395). The establishment of a criminal justice system based on the rule of law presents itself as a system that treats all individuals who come

before it as equals; however, this legal system was developed and implemented based on a set of beliefs and values that reject the validity of Indigenous culture and the effectiveness of Indigenous law (Cunneen, 2014). The concept of risk management and the process of risk assessment in the justice system have also been found to put Indigenous peoples at a disadvantage, because they fail to acknowledge historical and political context, and place Indigenous peoples' rights secondary to their higher risk classification (Cunneen, 2014).

In an effort to address the issue of Indigenous overrepresentation within the correctional setting, both of the aforementioned countries have implemented a variety of policies, practices, and services. Sentencing guidelines that aim to consider the unique circumstances of Indigenous offenders, as well as the historical impacts that continue to affect them, have been introduced in Canada (R v Gladue, 1999), and New South Wales (NSW), Australia (Manuell, 2009). Within the correctional systems, a number of different approaches have been taken to provide Indigenous prisoners with more culturally relevant and appropriate programs and services. Correctional institutions have been established specifically for Indigenous prisoners in both Canada and regions of Australia, referred to as Indigenous Healing Lodges (Correctional Service Canada [CSC], 2019), and Indigenous prisons (Baldry & Cunneen, 2014), respectively.

Numerous programs for Indigenous prisoners have been developed and implemented in the Canadian and Australian correctional systems. While traditional correctional programs target criminogenic risk and needs, Indigenous programs also consider and target non-criminogenic needs, and "begin with understanding the outcomes and effects of longer-term oppression, and move from there toward healing of the

individuals" (Cunneen, 2014, p. 401). Finally, there are a number of services available to Indigenous prisoners in the correctional systems of both countries. Indigenous prisoners in Canada and Australia have the ability to consult with Indigenous Elders for support, knowledge, and guidance while incarcerated (ALRC, 2017a; CSC, 2017)

**Thesis Objectives**

This thesis will draw upon Truth and Reconciliation Canada's (2015) and the Australian Law Reform Commission's (2017) reports, with a specific focus on the calls to action and recommendations that focus on correctional programs and services. It will attempt to conduct a cross-national comparison of the policies, practices, and services that have been implemented or improved in the Canadian provinces and Australian territories with the highest levels of overrepresentation, since the publication of the respective national reports. Given that Canada and Australia have significant Indigenous populations, share a similar language and commonwealth heritage, and that the TRC (2015) and ALRC (2017b) shared similar mandates, they provide a natural point of comparison.

Chapter two will review the data on the overrepresentation of Indigenous people in Canada and Australia. It will trace the history of overrepresentation in each of these countries and review the explanations that have been provided in the literature for this overrepresentation. It will briefly review key commissions and legal events that have reviewed the situation of over-representation in each country. Finally, it will make note of the correctional initiatives that have taken place in each country to find culturally appropriate ways to manage incarcerated Indigenous individuals.

Chapter three will review the methodology which will be used for completing a comparative examination of the various policies, practices, and services that were implemented or amended, following the release of each commissions' reports. It will discuss the steps that were taken when collecting, analyzing, and comparing the data from Canada and Australia.

Chapter four will review the results of the comparative examination, highlighting differences and similarities in the initiatives in each country. This chapter will provide a discussion of the data found for each province, state, and territory, which was used to categorize each response.

Chapter five will conclude the thesis with a discussion of key highlights and findings of the thesis as well as the implications of these findings. It will further discuss the limitations of the current study and identify future directions for further research on the topic of Indigenous overrepresentation in the criminal justice system.

# Chapter 2: Literature Review

## Colonization of Canada and its Impacts

In order to understand the issue of overrepresentation in proper context, it is imperative to understand the impact that colonization had on the Indigenous peoples of Canada and Australia. The enduring intergenerational impacts of colonization have been found to play a significant role in the overrepresentation of Indigenous offenders in the criminal justice systems in both countries. Throughout the colonization of what is now Canada, European settlers pursued a policy of cultural genocide in their interactions with Indigenous people (TRC, 2015).[1] The Indian Residential School [IRS] system was one of the central ways in which the newfound country of Canada instilled its culture, language, and religion in Indigenous youth. In its attempt to eliminate Indigenous language, identity, and culture, European settlers removed Indigenous children from their families, communities, and cultures, and forced them to adopt a more European, Christian style of life (TRC, 2015). Residential schools operated in Canada from the mid to late 1800s until the last seven residences closed between 1995 and 1998. Throughout their period of operation, the Government of Canada has estimated that approximately 150,000 Indigenous youth came in contact with the system of 139 schools and residences (TRC, 2015). During their time at residential schools, Indigenous children were often the victims of both physical and sexual abuse at the hands of the residential school staff (TRC, 2015).

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[1] "*Cultural genocide* is the destruction of those structures and practices that allow the group to continue as a group" (TRC, 2015, p. 1).

In its final report, the TRC (2015) identified numerous ways in which colonialism, and its lasting effects, both directly and indirectly contributed to the high rates of Indigenous contact with the Canadian criminal justice system. As a result of the cultural genocide and various forms of abuse suffered by Indigenous youth at residential schools, the Indigenous population in Canada continues to endure various types of intergenerational effects and trauma. The lasting impacts of the schools, as well as the policies that governed them, have contributed to a loss of culture, as well as health, educational, income, and social disparities that continue to exist between the Indigenous and non-Indigenous populations in Canada (TRC, 2015).

As the intent of the IRS system was to erase Indigenous culture and language, and replace it with a European way of life, loss of culture was one of the many impacts. Throughout its consultations with IRS survivors, the TRC (2015) heard stories of many different forms of punishment and abuse that were suffered by Indigenous youth for speaking Indigenous languages. Residential schools also instilled feelings of shame in Indigenous students by depicting Indigenous language and culture as inferior to those of Europeans. The association of shame and abuse with Indigenous language and culture led some Survivors to decide not to teach their own children their history and language (TRC, 2015).

Wilk, Maltby and Cooke (2017) conducted a scoping review of previous literature on the impacts of the Canadian IRS system on health and wellbeing. The results of the review indicated that individuals who had attended a residential school self-perceived their overall health and wellbeing to be poorer than those who had not attended. Further, their findings suggested that the mental health of Survivors and their children was

negatively impacted by their residential school attendance. Mental health challenges that were found to be associated with IRS attendance included, “mental distress, depression, addictive behaviours and substance misuse, stress, and suicidal behaviours” (Wilk et al., 2017, p. 18). These findings are in line with those of other studies, as Kumar & Tjepkema (2019) found that suicide rates are higher amongst the Indigenous population, and the TRC (2015) reported higher rates of drug- and alcohol-related death.

In a review of previous literature on the IRS system, Bombay et al. (2014) found a consistent relationship between IRS attendance by a family member and psychological distress. Their findings also suggest that family history of IRS attendance increased the frequency at which an Indigenous person is exposed to new stressors and increases the reactivity to these stressors. Another important finding was that an increase in the number of generations that attended an IRS resulted in an increase in the level of distress, which Bombay and her colleagues (2014) argue supports the notion that the historical trauma is cumulative. Additionally, survivors of residential schools have reported turning to substance use as a form of coping with their abuse and trauma, some victims of abuse have gone on to become abusers themselves, and some Indigenous youth who were treated as prisoners in the system have gone on to become prisoners in provincial and federal institutions in Canada (TRC, 2015).

In its consultations, the TRC (2015) learned that Indigenous youth who were subject to a strict and disciplined upbringing in the IRS system struggled to go on to be loving parents to their own children. This may explain, in part, the finding that Indigenous children were 4.2 times more likely to be the subjects of child maltreatment investigations than non-Indigenous children (TRC, 2015). Rates of domestic violence in

Canada are also found to be highest between Indigenous perpetrators and a related, Indigenous victim; commonly a spouse, family member, or friend (Department of Justice, 2017).

The history of the IRS system, and its legacy, has also negatively impacted the educational attainment of Indigenous peoples. The TRC (2015) found that children who attended residential schools were educated in environments that were associated with "homesickness, hunger, fear, abuse, and institutionalized helplessness" (p. 145). Additionally, the schools lacked proper funding, positive mentors, a well-established curriculum, and qualified educators. The combination of these factors produced low levels of academic success, as the TRC (2015) stated that in the mid 1950's Indian Affairs reported that only approximately half of the students enrolled in the IRS system reached the sixth grade. Findings also suggest that the education of future generations is inhibited by residential school attendance. The descendants of IRS Survivors are found to have lower levels of academic success in comparison to those whose ancestors did not attend an IRS (TRC, 2015).

The TRC (2015) has associated low levels of academic achievement with "chronic unemployment or under-employment, poverty, poor housing, substance abuse, family violence, and ill health that many former students of the schools have suffered as adults" (p. 145). The Commission also stated that it is not just IRS Survivors that experience unemployment and low earning potential, it is also the next generation (TRC, 2015). Statistics Canada (2015) maintained that unemployment rates amongst the Indigenous population in Canada are higher than the rates amongst the non-Indigenous population. Indigenous peoples who do overcome the intergenerational barriers to

employment face further challenges in the workplace. Indigenous workers were found to make less money than non-Indigenous workers, regardless of the job that they performed and its location (TRC, 2015).

The intergenerational impacts that colonization has had on the Indigenous population in Canada may be directly, or indirectly, associated with involvement in the criminal justice system. The Department of Justice (2017) stated that Indigenous peoples are at an increased risk for both offending and victimization, based on a number of factors that are found to be higher in the Indigenous population. These factors are unemployment, alcohol use, single-parent and common-law households, and young age. However, the complexity of the issue of overrepresentation must not be understated. The OCI (2013) states that "systemic discrimination and attitudes based on racial or cultural prejudice, as well as economic and social disadvantage, substance abuse and intergenerational loss, violence and trauma" (para. 4) all contribute to the overrepresentation of Indigenous offenders in custody.

**Colonization of Australia and its Impacts**

In 2017, the ALRC was given the responsibility of conducting an inquiry into the overrepresentation of Aboriginal and Torres Strait Islander people in the Australian criminal justice system. In their final report, the ALRC (2017b) acknowledged that the overrepresentation of Indigenous people within the justice system was in part due to a number of social and historical factors. Upon the formal establishment of NSW as a colony in 1788, English common law became the governing law of the land, for both Indigenous peoples and new settlers (ALRC, 2017b). Similar to the colonization of Canada, Indigenous children were removed from their homes and families and

subsequently placed in institutions, foster care, or placed for adoption in an attempt to instil European culture into the youth. The first school for Indigenous children opened in 1814, and while it was initially viewed quite positively by the Indigenous population, opinions drastically changed after the intentions to distance children from their communities and culture became clear (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia), 1997).

The Aborigines Protection Board was established in 1883 and was tasked with the responsibility of overseeing reserves and a population of approximately 9,000 Indigenous people in NSW. In 1915, following the enactment of the *Aborigines Protection Amending Act 1915*, the Board was given the authority to remove Indigenous children from their families, without having to establish any grounds of neglect (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia), 1997). As of 1936, the large majority (approximately 80 percent) of Indigenous youth who had been removed from their homes by the Board were female, who were sent to a home until the age of 14 at which time they were sent off to work (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia), 1997). Following a great deal of resistance and backlash from Indigenous communities and advocates, the 1940 Act required the Board to prove that Indigenous children were either neglected or uncontrollable in order to forcibly remove them from their families. In compliance with the *Child Welfare Act 1939*; however, when removed under these conditions the children were made a ward of the Board (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia), 1997). As the Board began to reach capacity in

the institutions that had been established for Indigenous youth, it began to place the wards in foster families, many being non-Indigenous. When the Board was abolished in 1969, over one thousand children were in its care at the time, many of whom never returned to their families or communities (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia), 1997). In the end, it has been estimated that from 1910 up until the 1970s as many as 1 in 3 Indigenous youth were removed from their homes, leading this cohort to be referred to at the 'Stolen Generation' (Nogrady, 2019).

The history of colonization has had many lasting impacts on the Indigenous population in Australia. The loss of Indigenous culture and language was a prominent impact of colonization in Australia. Some children were removed from their homes days after they were born, and 'raised white', while others were removed at older ages and prohibited from speaking Indigenous language or practicing their culture (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia), 1997). Accounts of Indigenous peoples who had been removed from their home and community at a young age included feelings of alienation and confusion, as they stated that they did not feel they belonged in either Indigenous or European culture. The families and communities that the young children were taken from were faced with feelings of grief and trauma (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia), 1997).

High rates of psychological distress have also been observed in the 'Stolen Generation' as a result of the forceful removal from their community and families. Indigenous peoples who were removed from their homes as children report higher rates

of Post-Traumatic Stress Disorder (PTSD), depression, and anxiety, when compared to Indigenous peoples who were raised by their family, and non-Indigenous people (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families [Australia], 1997). The mental health impacts of being removed from one's family have been associated with poor physical health, unwillingness to follow treatment plans, and alcohol use. Further, the impacts of psychological distress have been found to be intergenerational, as the children of Indigenous peoples suffering from psychological distress are removed from their homes at higher rates (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families [Australia], 1997).

The impacts of intergenerational trauma in the Indigenous population in Australia has also been found to negatively impact physical health. Menzies (2019) stated that physical health risks were positively correlated with the experience of traumatic events, and that the relationship was independent of the impacts on mental health. The removal of Indigenous children from their homes was identified as a prominent source of trauma for the Indigenous population, in addition to assimilation, abuse, neglect, and witnessing domestic violence. Menzies (2019) work supported the notion that trauma increases the risk of diagnoses of anxiety and depression, as well as risks of other behavioural and emotional challenges, and substance use.

The removal of Indigenous children from their families in Australia resulted in intergenerational parenting challenges. Children that were removed from their homes did not have the opportunity to form a loving attachment with a parent, subsequently inhibiting their ability to become loving and nurturing parents themselves (National

Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families [Australia], (1997). Additionally, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia) (1997) found that more than one-quarter of the children of the ‘Stolen Generation’ between the ages of five and fourteen had “substantial behavioural problems” (p. 195); which has the potential to lead to another generation of Indigenous children being removed from their homes.

The removal of Indigenous children from their homes has also negatively impacted their educational and employment successes. Accounts of the experiences of Indigenous youth involve little to no education, and the education that was provided was of little value (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families [Australia], 1997). Indigenous youth who attended missions and institutions had their future education and career prospects limited. The children were generally not educated beyond the grade school level, despite their desires to continue. They were also told that their Indigenous identity made them unfit for most careers beyond farming and manual labour (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families [Australia], 1997).

Educational and employment disparities continue to exist between the Indigenous and non-Indigenous populations in Australia. As of 2016, the attendance rates of Indigenous students were lower than for non-Indigenous students, with the lowest rates of attendance of Indigenous youth being in Northern Territory and Western Australia (Department of the Prime Minister and Cabinet, 2018). In 2016, 63.5 percent of Indigenous Australians between ages twenty and twenty-four had completed Year 12,

compared to 89.1 percent of their non-Indigenous counterparts. However, data suggests that educational attainment is improving amongst the Indigenous population, as the Year 12 completion rate in 2016 was up 17.9 percent from the completion rate in 2006.

The results of the 2016 Census found that 52 percent of the Indigenous population of Australia was participating in the workforce. Non-Indigenous Australians were found to be employed at a rate of 1.4 times more than Indigenous Australians. The lowest rates of participation in the workforce were in Northern Territory and Western Australia, at 37 percent and 47 percent, respectively (ABS, 2018a).

The Aboriginal Legal Service of Western Australia, hereafter referred to as ALSWA, (2015) argues that the reasons for the high incarceration rates of Indigenous Australians fall into one of two categories. The first category is referred to as underlying factors, and the second is referred to as structural biases and discriminatory practices. Underlying factors may include the history of colonization and its legacy, trauma and abuse, socio-economic disparities, homelessness, low academic achievement, and poor health. As previously discussed, most of the 'underlying factors' identified by the ALSWA can be either directly or indirectly linked to colonization. Structural biases and discriminatory practices may include practise and policies that are either directly or indirectly discriminatory towards the Indigenous population, and the negligence on behalf of the justice system to acknowledge cultural differences (ALSWA, 2015).

**Indigenous Overrepresentation in Canadian Corrections**

Issues relating to Indigenous incarceration in Canada were formally acknowledged for the first time in a Canadian government seminal report on sentencing, published in 1984 (Roberts & Reid, 2017). The issue was again highlighted in the Royal

Commission on Aboriginal Peoples' 1996 report (CSC, 2013). This report also acknowledged that the issue was continuously increasing in its severity, and stated that the justice system was failing the Indigenous population. However, the acknowledgement of the issue did little in terms of addressing it, as overrepresentation continued to increase in severity in the years following the government report. Truth and Reconciliation Canada (TRC), in their executive summary, reported that in 1995-1996, Indigenous people accounted for 16 percent of all offenders who received a custodial sentence (TRC, 2015). By 2011-2012, Indigenous people accounted for 28 percent of offenders sentenced to custody, while accounting for 4 percent of the total Canadian population. More recent figures published by Statistics Canada (Malakieh, 2019) maintain that the issue of Indigenous overrepresentation in custody remains a prominent issue in Canada. In the 2017-2018 fiscal year, the Indigenous population constituted 4.1 percent of the total population in Canada. During this same period, Indigenous adult offenders accounted for 30 percent of admissions to provincial and territorial correctional institutions, and 29 percent of admissions to federal prisons. This statistic included admissions for terms of sentenced custody, remand, and temporary detention (Malakieh, 2019).

It is important to acknowledge that the issue of overrepresentation is not uniform across genders or the country. In 2011-2012, Indigenous women accounted for 43 percent of the total admissions to women's correctional facilities in Canada (TRC, 2015). Statistics on admissions to custody also reveal that in 2016-2017, 42 percent of females admitted to custody were Indigenous and 28 percent of males admitted to custody were Indigenous (Malakieh, 2019). Overrepresentation of Indigenous offenders in prison is also found to be higher in the western provinces, and especially in the Prairie Provinces.

LaPrairie (2002) stated that in respect to the Indigenous populations within the provinces, Indigenous offenders were not overrepresented in correctional facilities in Prince Edward Island (PEI) and Quebec, and were incarcerated at approximately 1.5-2 times the expected rate in Nova Scotia and Newfoundland, based on the total Indigenous population in each province. In contrast, the overrepresentation of Indigenous offenders in Saskatchewan was ten times higher than the total Indigenous population in the province, followed by Alberta and Ontario both at nine times, and Manitoba at seven times (LaPrairie, 2002).

Disproportionalities in overrepresentation across Canadian provinces and territories continue to exist in more recent correctional statistics. Malakieh (2019) found that the percentage of adults admitted to custody in 2017-2018 that identified as Indigenous ranged from 5 percent to 96 percent across Canadian provinces and territories. Indigenous prisoners accounted for ten percent, or less, of admissions to custody in Quebec, PEI, Nova Scotia, and New Brunswick. On the contrary, Indigenous prisoners accounted for seventy-four percent, or more, in Saskatchewan, Manitoba, Northwest Territories, and Nunavut (Malakieh, 2019). While more than three-quarters of the incarcerated population in Northwest Territories and Nunavut territorial corrections are Indigenous, it is important to note that the Indigenous populations within these territories is also larger. When looking specifically at overrepresentation rates in custody, the highest levels have been observed in Saskatchewan and Manitoba, where incarceration rates are high and a smaller percentage of the total population is Indigenous.

Differences in incarceration rates also exist between genders. In 2017-2018, Indigenous females accounted for 6 percent of admissions to adult custody for their

gender in Nova Scotia, compared to 84 percent in Manitoba; while Indigenous males accounted for 4 percent of admissions to custody in Prince Edward Island, and for 73 percent of admissions in Saskatchewan (Malakieh, 2019). These figures are even starker in the Canadian territories, as Indigenous males made up 96 percent, and females 97 percent, of admissions to custody in Nunavut in 2017-2018 (Malakieh, 2019).

**Indigenous Overrepresentation in Australian Corrections**

The level of overrepresentation of Indigenous people in the Australian correctional system has not been stable since the time of colonization. In the early 1800s, imprisonment of Aboriginal and Strait Islander people was found to be more common in the northern areas of Australia than it was in the south. Upon the colonization of Western Australia, a prison was established solely for Indigenous prisoners, leading this population to constitute 42 percent of Western Australia's prison population in 1909 (ALRC, 2017b). The enactment of a Protection Regime, as well as an increase in Indigenous employment, have both been cited as factors that led to the decrease of Indigenous imprisonment; by 1915, Indigenous people made up 13 percent of the prison population (ALRC, 2017b).

The incarceration rates of Indigenous peoples began to increase by the mid-1900s, as the result of increased contact with the criminal justice system. Weatherburn proposed that this was an indirect, adverse result of assimilation policies that were intended to result in formal equality for the Indigenous population (ALRC, 2017b). However, tracking overrepresentation rates proved to be difficult until 1982, when the national prison census was implemented. At this time, it was revealed that Indigenous people

outnumbered non-Indigenous people in prison across the country, at rates ranging from 3.3 to 1 in Tasmania, to as many as 29 to 1 in Victoria (ALRC, 2017b).

In regards to present rates of Aboriginal and Torres Strait Islander peoples' overrepresentation in the Australian justice system, the ALRC (2017b) acknowledged a wide range of contributing social factors. These included disparities in education and employment, health and disabilities, harmful use of alcohol, housing, and living conditions, child protection and youth justice, family violence, intergenerational trauma, and cycles of incarceration (ALRC, 2017b). Lack of access to interpreters, as well as limited availability of community-based sentences and diversion programs, have been identified as unique issues faced by Torres Strait Islander people (ALRC, 2017b).

Similar to the statistics observed in Canada, Indigenous incarceration rates in Australia were also found to vary across genders and throughout the country. In terms of location, the highest rates of overrepresentation have been observed in the Northern Territory, where Aboriginal and Torres Strait Islander people accounted 30 percent of the territory's population and 84 percent of the incarcerated population (ALRC, 2017b). In contrast, Indigenous Australians in Victoria comprised 1 percent of the state's population, and 8 percent of its prison population (ALRC, 2017b). These statistics remained stable in the following year, as in 2018 Aboriginal and Torres Strait Islanders represented 84 percent of the prison population in the Northern Territory, and 9 percent of the prison population in Victoria (ABS, 2018c). Overrepresentation of Indigenous women has also been identified as a concern in Australia, as statistics indicate that Aboriginal and Torres Strait Islander women are more than twenty-one times more likely to be incarcerated than

non-Indigenous women (ALRC, 2017b). The Australian Human Rights Commission (2018) stated that Indigenous women accounted for 34 percent of incarcerated women.

Indigenous Australians were also found to be overrepresented in readmissions to custody. In a Northern Territory study of prisoners released between 2001 and 2002, Indigenous offenders were found to return to custody within two years of release at a rate three times higher than non-Indigenous offenders, at 45 percent and 15 percent respectively (Northern Territory Office of Crime Prevention, 2005). In NSW, 71 percent of Indigenous prisoners released from custody in 2001-2002 were found to have committed a new offence within twelve months, compared to 58 percent of non-Indigenous prisoners.

**Addressing the Issue of Overrepresentation in Canada**

In an effort to address the issue of Indigenous overrepresentation within the correctional setting, both of the aforementioned countries have implemented a variety of policies, practices, and services that are culturally relevant. In Canada, notable attempts to address and reduce Indigenous overrepresentation in the correctional system began as early as the 1970s with the introduction of community-borne Aboriginal Liaison Officers within the federal correctional setting (Martel, Brassard, & Jaccoud, 2011). In November of 1992 the *Corrections and Conditional Release Act* (CCRA) came into force, replacing the prior governing *Penitentiary Act* and *Parole Act* (CSC, 2015). The CCRA was a monumental piece of legislation as it was said to have "redefined" the relationship between federal correctional officials and Indigenous communities by allowing for their input and participation in the establishment of Indigenous programming. The CCRA also

introduced the requirement for the federal correctional system to include Indigenous spirituality and culture within the correctional environment (CSC, 2013).

The Royal Commission on Aboriginal Peoples (1996) also led to marked changes within the Canadian criminal justice system. In their report, the Commission concluded that the justice system in Canada was failing Indigenous people. Following this conclusion was an amendment to the *Criminal Code* in Bill C-41 which included the introduction of section 718.2(*e*). This section of the *Criminal Code* states that "a court that imposes a sentence shall also take into consideration the following principles: all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders."

The SCC addressed the application of s. 718.2(*e*) in its decision of *R v Gladue*. In this case, the judges stated that the specific wording of this section of the *Criminal Code* implies that the circumstances of Indigenous are unique compared to those of non-Indigenous offenders. These unique circumstances warrant the consideration of background and systemic factors which may have led to the involvement in the justice system, as well as the procedures and sanctions which may be more appropriate to the offender and their culture (R v Gladue, 1999, para. 66). In the *Gladue* case, the SCC also held that section 718.2(*e*) was to be applied in the cases of all Indigenous offenders regardless of whether they resided on or off a reserve, as this did not dictate the level of involvement with their culture (R v Gladue, 1999, para. 91).

The *Gladue* decision and its implications were revisited by the SCC in *R v Ipeelee* (2012). More than a decade after the former case had been decided, the Supreme Court

judges acknowledged that despite the introduction of s. 718.2(*e*) in 1996, and the clarification provided by the court in *Gladue* in 1999, the overrepresentation of Indigenous individuals in the justice system had continued to increase. In their decision of *R v Ipeelee*, the SCC further clarified that when applying that Gladue Principles in the cases of Indigenous offenders, the defendant, and their counsel are not required to identify a causal link between the previously mentioned background and systemic factors and the offence which has placed them before the court. Not only would this place an unintended burden upon the accused, but it also fails to acknowledge the pervasive intergenerational deprivations that Indigenous peoples experience (R v Ipeelee, 2012, para. 81-83). A second important clarification that was provided by the Supreme Court in the decision of *Ipeelee* concerned the types of offences for which the Gladue Principles should apply. The Court acknowledged that the principles had been applied in inconsistently, particularly in the cases of violent offences; however, the court asserted that under s. 718.2(*e*), judges had the legal duty to apply the Gladue Principles to all Indigenous offenders, regardless of the nature of their offence (R v Ipeelee, 2012, para. 84-87).

Within the correctional system, Correctional Program Officers inside the institutions have been tasked with the responsibility of delivering culturally relevant programs to Indigenous prisoners in an attempt to reduce reoffending. Prisoners in penitentiaries were also allowed to meet with Elders to support their spiritual and cultural needs and healing (Martel et al., 2011). Indigenous prisoners who choose to follow a traditional Indigenous pathway to healing will be given a correctional plan which incorporates their traditions and culture, and they may also be given the opportunity to

Pathways Healing Units within federal penitentiaries (Martel et al., 2011). The federal correctional system in Canada has also established Aboriginal Healing Lodges, which are minimum security level institutions for Indigenous males, and minimum/medium security level institutions for Indigenous females, that may be operated by CSC or the Indigenous community (CSC, 2019b). The objective of Aboriginal Healing Lodges is to take a holistic approach to the correctional process and provide Indigenous offenders with services and programs which are relevant to the Indigenous culture. Elders and Indigenous communities work with prisoners at Healing Lodges to provide guidance and support throughout their incarceration (CSC, 2019b).

Provincial correctional services throughout Canada have also developed and implemented policies, programs and services to better meet the needs of Indigenous offenders, and support them in their healing. Each provincial correctional system has developed its own policies to better meet the needs of the Indigenous prisoners in its custody. For example, the Ministry of the Solicitor General of Ontario (2017) allows Indigenous prisoners to meet with Indigenous leaders, Elders, and Healers. Indigenous prisoners in Ontario also have the opportunity to participate in spiritual and cultural ceremonies, feasts and fasts, wear ceremonial clothing, and have access to traditional medicines. In British Columbia, B.C. Corrections (n.d.) established Aboriginal Programs and Relationships Section to tend to the specific challenges of Indigenous offenders in its custody by improving relationships between the correctional system and Indigenous communities, ensure programs provided to Indigenous prisoners are effective and respond to needs identified by Indigenous communities. B.C. Corrections (n.d.) has also developed specific programs and services to reduce criminality, incarceration, and

victimization amongst the Indigenous population, which include: diversion programs, restorative justice initiatives, reintegration services, and alternative measures.

**Addressing the Issue of Overrepresentation in Australia**

Efforts to address Indigenous overrepresentation have also been made in Australia, at the national, state, and territorial levels. The ALRC (2017b) stated that prison programs that target the known causes of offending may be effective in reducing reoffending in the Aboriginal and Torres Strait Islander population. This includes programs targeting alcohol and drug abuse, mental health issues, poor social and familial relationships, and lack of education and vocational skills, which were all issues identified as contributing to overrepresentation by the ALRC (2017b). Australian prisons, like those in Canada, aim to provide programs and services that are culturally relevant to their Indigenous prisoners, and involving their communities when appropriate (ALRC, 2017b).

Australian states and territories have adopted their own principles and considerations for the cases of Indigenous individuals before the courts. For example, in Neal v The Queen (1982) in Queensland, the court stated that while courts must apply sentencing principles equally to all individuals, however “in imposing sentences courts are bound to take into account, in accordance with those principles, all material facts including those facts which exist only by reason of the offender's membership of an ethnic or other group” (Neal v The Queen, 1982, para. 326). This became known as the substantial equality principle. In NSW, R v Fernando (1992) led to the establishment of what is now known as the Fernando Principles. These eight sentencing principles require the courts to consider: additional facts related to the case based on the defendants’ membership of a specific ethnic group; Indigenous identity as a means of explaining the

offence and circumstance rather than to mitigate punishment; the issue of substance abuse and violence in Indigenous communities; not to deprive Indigenous offenders from the potential protections that punishment is assumed to provide; alcohol abuse to be a mitigating factor in the cases of offenders where it relates to their upbringing and socio-economic factors; to avoid any racism, paternalism or collective guilt and remain objective when considering the offence in its context; how lengthy sentences of incarceration may be disproportionately harsh when served by an Indigenous prisoner in a foreign, European system; and that the punishment is still suitable to the crime that has been committed, while maintaining rehabilitation as the top priority (R v Fernando, 1992, para, 62-63).

At the state and territory level, many correctional programs and services have been developed to better serve and support Indigenous prisoners. In Southern Australia, an Aboriginal Services Unit was developed to provide both operational and strategic advice in cases involving Indigenous issues and to develop programs and services that are culturally relevant to Indigenous offenders in their custody (Department of Corrections, 2016). Aboriginal Liaison Officers have also been introduced to the correctional setting as a point of contact for both Indigenous offenders and their families and communities, and are responsible for training and professional development of correctional staff in Indigenous relations (Department of Corrections, 2016). In Western Australia, the West Kimberley Regional Prison (WKRP) was established in November 2012 as an institution specifically for Aboriginal and Torres Strait Islander peoples. Policies and practices at the WKRP are based upon Indigenous culture and its values and accept the traditions and

beliefs of Indigenous peoples (Government of Western Australia Department of Justice, 2016).

**National Inquiries**

National inquiries which included research on Indigenous peoples, their histories, their communities, and their involvement in the criminal justice system were conducted in both Canada and Australia. The mandate of Truth and Reconciliation Canada's (2015) inquiry was to acknowledge the complex history and truth of the IRS system in Canada and its impacts, honour the resilience of IRS Survivors and their communities, and to move forward towards reconciliation amongst Indigenous people and communities, the non-Indigenous population, government, and churches; while inspiring healing. While the report was not specifically on the topic of Indigenous contact with the criminal justice system in Canada, it became a part of the discussion as a consequence of the IRS system and its lasting, intergenerational impacts. The Australian Law Reform Commission (2017b) conducted an inquiry specifically on the high incarceration rates of Aboriginal and Torres Strait Islander people. The purpose of the inquiry was to acknowledge the role of the law and its frameworks in overrepresentation, and to identify and explain the social, economic, and historic factors that influence the level of Indigenous over-incarceration in Australian prisons.

Through consultations with Indigenous Elders and communities, as well as IRS system survivors, the TRC (2015) found that the inclusion of Indigenous culture and spirituality is necessary to promote healing. Thus, correctional programming and services for Indigenous offenders should include aspects of Indigenous culture and spirituality to heal offenders and increase the potential for successful reintegration. The TRC (2015)

stated that previous research found reoffending rates to be lower amongst Indigenous offenders who had participated in cultural ceremonies and activities. However, the TRC (2015) acknowledged that a limited number of correctional programs and services are available to prisoners serving shorter sentences within the provincial correctional systems.

In their final report, the TRC (2015) listed ninety-four calls to action. These calls to action were considered necessary for the government to respond to in order to acknowledge the impacts of residential schools and continue efforts towards reconciliation. Call to action number twenty-five through forty-two are listed under the title of justice. In the calls to action under this title the TRC identify the importance of cultural competency training for criminal justice system professionals, awareness and understanding of the IRS system and its wide range of lasting impacts, and the importance of consultation and collaboration with Indigenous people and communities when developing programs and services (TRC, 2012). Within the scope of this paper, it is important to highlight calls to action number thirty and thirty-six, which state as follows:

*30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so;*

*36. We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused* (TRC, 2015, p. 324).

The ALRC's (2017b) inquiry into the incarceration rates of Indigenous peoples in Australia highlighted a number of key factors and challenges of Indigenous correctional programs. The final report stated that in addition to programs that target well known and established causes of criminal behaviour, programs for Indigenous prisoners should also include Indigenous culture to effectively reduce reoffending. The Commission noted that the budget and policies of the correctional service, in addition to the population of the facilities, also play a role in the effectiveness of correctional programming (ALRC, 2017b). The report also highlighted that it is not just the programs, but their delivery that must be effective. The ALRC (2017b) noted that two key challenges were that correctional programs were developed for male prisoners, and programs were not typically made available to prisoners serving sentences of less than six months.

Upon completion of their inquiry into the incarceration rates of Indigenous peoples, the ALRC (2017b) also developed a list of recommendations to address the issue. As this inquiry was specifically focused on over-incarceration, each of the recommendations was directly related to the Australian criminal justice system (including, but not limited to, bail, mandatory sentencing, and prison programs and parole), or factors linked to offending such as alcohol consumption (ALRC, 2017b). In regards to prison programs, the ALRC (2017b) recommended:

> ***"Recommendation 9–1*** *State and territory corrective services agencies should develop prison programs with relevant Aboriginal and Torres Strait Islander organisations that address offending behaviours and/or prepare people for release. These programs should be made available to:*
>
> - *prisoners held on remand;*

- *prisoners serving short sentences; and*
- *female Aboriginal and Torres Strait Islander prisoners"* (p. 15);

***"Recommendation 16–1*** *The Commonwealth Government, in consultation with state and territory governments, should develop national criminal justice targets. These should be developed in partnership with peak Aboriginal and Torres Strait Islander organisations, and should include specified targets by which to reduce the rate of:*

- *incarceration of Aboriginal and Torres Strait Islander people; and*
- *violence against Aboriginal and Torres Strait Islander people"* (p. 18).

Similar to the calls to action from the TRC (2015), the recommendation from the ALRC (2017b) reinforces the importance of consulting and collaborating with Indigenous people and communities when establishing programs and services for Indigenous offenders and ensuring that the programs and services are culturally relevant to these individuals. Both commissions have also identified the ultimate goal of reducing or eliminating the overrepresentation of Indigenous prisoners in custody.

# Chapter 3: Methodology

## Data Collection and Procedure

This thesis aimed to compare correctional programming for Indigenous prisoners in countries in which there is an overrepresentation of Indigenous individuals in the criminal justice system. Initially, this study intended to conduct a comparative analysis of Canada, Australia, and New Zealand. These three countries all bear similarities in their histories of colonization, the prominence of their Indigenous populations, and the issue of overrepresentation of Indigenous offenders within their criminal justice systems (ActionStation, 2018; ALRC, 2017; TRC, 2015). Preliminary research aimed to find a solid basis for comparison between the correctional programs and services available to Indigenous prisoners in each of the three countries.

In preliminary research, Google searches were conducted to determine the current state of overrepresentation in each of the three countries. As this thesis aimed to conduct a comparison across three countries, several different terms, and combinations thereof had to be searched. All searches included the key term “overrepresentation”, combined with the terms “criminal justice system”, “custody”, and “incarceration”. Searches for Canadian data included the terms “Indigenous” and “Aboriginal”; for Australian data included “Indigenous” and “Aboriginal and Torres Strait Islander”; and for New Zealand data included “Indigenous” and “Māori”.

This research determined that nationwide reports on Indigenous history and overrepresentation in the criminal justice system had been released in Canada, Australia, and New Zealand. The reports in Canada and Australia had been released by commissions, while the report in New Zealand was published by the Department of

Corrections. The Canadian TRC (2015) report focused on the IRS system and its intergenerational effects. While it was not the focus, overrepresentation in the criminal justice system was addressed as one of the many intergenerational impacts of colonization and the IRS system. The Australian ALRC (2017b) report focused specifically on the over-incarceration of Indigenous offenders. Finally, the Department of Corrections' (2007) report in New Zealand analyzed the overrepresentation of the Māori people throughout the entire criminal justice system.

Two concerns arose about comparing all three of these reports, the first being that New Zealand's report was published eight years before the Canadian report, ten years before the Australian report, and thirteen years before this study. This meant that there was a potential that the data in the Department of Corrections' (2007) report may now be out of date. The second concern was that the New Zealand report was published by the Department of Corrections, while the other two reports were published by independent commissions. There was a concern of potential bias in the New Zealand report, given that it had been published by the government agency responsible for the operation of corrections. Another challenge that became evident early in the research process was the differing levels of government that oversee corrections across the three countries. The correctional system in Canada operates at both the federal and provincial levels, while Australian corrections operate solely at the state and territorial level, and New Zealand solely at the federal level.

For the reasons stated above, formulating a cross-national comparison of the three countries proved to be difficult. New Zealand's correctional system operates solely at the federal level, and New Zealand has not published a national inquiry into its Indigenous

peoples or the issues that they face in the justice system since 2007 (New Zealand Department of Corrections, 2007). Additionally, data on the colonization of New Zealand, the history of corrections, and programs and services available to Indigenous offenders proved to be more limited, when compared to the wealth of data available for Canada and Australia. As a result, the focus of this thesis was narrowed to Canada and Australia. These countries were determined to be suitable for this analysis, as both countries were colonized by English settlers (ALRC, 2017; TRC, 2015) and have thus become predominantly English-speaking, Commonwealth countries. Their histories of colonization continue to leave the Indigenous peoples of both countries at significant disadvantage. Further, both countries have seen the establishment of commissions (ALRC, 2017; TRC, 2015) that have sought to understand and address the histories of Indigenous peoples, and the intergenerational impacts of colonization, and have produced reports within the past five years. Canada and Australia are also more similar in terms of population size, as in 2018 it was estimated that Canada had a total population of 37,057,765 people (Statistics Canada, 2019) and Australia had a total population of 25,168,800 (ABS, 2019). The population of New Zealand is much smaller, estimated to be 4,951,500 at the end of 2019 (Stats NZ, 2020).

The Canadian correctional system operates at two separate levels – the federal and provincial – while the Australian correctional system is operated independently by each state and territory. Therefore, it was determined that in ordered to establish equal grounds for comparison, Canadian provinces should be compared to Australian states and territories, and data on Canadian federal corrections would be excluded from this thesis. It is important to acknowledge that as the correctional system operates at the federal level

and the provincial and territorial level in Canada, federal correctional legislation and policies may influence provincial and territorial corrections. However, the TRC (2015) calls to action that are the focus of the analysis call specifically upon the provincial and territorial governments, in addition to the federal government, to commit to reducing overrepresentation and working with the Indigenous populations to develop correctional programs and services. Additionally, the TRC (2015) stated that access to culturally appropriate programs for Indigenous offenders is limited in provincial institutions, where prisoners are serving sentences of less than two years. Therefore, the intent of this thesis is to compare the initiatives that the governments of Saskatchewan and Manitoba have undertaken under their own authority.

Canada is made up of ten provinces and three territories, while Australia is made up of six states and three internal territories. As comparing each of the provinces, states, and territories would be beyond the scope of the current study, it was decided that the provinces, states, and territories with the highest levels of overrepresentation in custody would be analyzed. This decision was made under the presumption that these provinces and territories would have the greatest need and incentive for change in regards to Indigenous corrections.

Recent publications from the national statistical agencies of Canada and Australia were analyzed to determine which provinces, states, and territories would be included within the study. Data published by Statistics Canada (Malakieh, 2019; Statistics Canada, 2017) was used to determine which Canadian provinces and/or territories experienced the highest rates of overrepresentation of Indigenous prisoners in custody. The Canadian provinces with the highest levels of overrepresentation of Indigenous prisoners in custody

were found to be Manitoba and Saskatchewan. In 2016, Indigenous peoples constituted 18 percent of the total population of Manitoba (Statistics Canada, 2017), and accounted for 75 percent of admissions to custody in 2017/18 (Malakieh, 2019). In Saskatchewan, Indigenous peoples made up 16.3 percent of the total population as of 2016 (Statistics Canada, 2017), while accounting for 74 percent of admissions to custody in the 2017/18 fiscal year (Malakieh, 2019). It is worth noting that Canadian territories, specifically Nunavut and Northwest Territories, have the highest rates of Indigenous admissions to custody in the country (Malakieh, 2019); however, they also have much larger Indigenous populations (Statistics Canada, 2017). Therefore, while the rates of admissions to custody were found to be the highest in the country, these rates were not found to be the highest in terms of disproportionality.

Data from the ABS (2018a; 2019b) was analyzed to determine which Australian states and/or territories had the highest levels of overrepresentation of Indigenous offenders incarcerated. In Australia, the territory of Northern Territory and the state of Western Australia were found to have the highest levels of overrepresentation of Indigenous prisoners in custody. In 2016, the Indigenous population accounted for 25.5 percent of the total population of Northern Territory (ABS, 2018b), while accounting for 83 percent of the daily prison population in 2019 (ABS, 2019b). In Western Australia, the Indigenous peoples made up 3.9 percent of the total population in 2016 (ABS, 2018b), while constituting 39 percent of the adult prison population in 2019 (ABS, 2019b).

The analysis of this study was conducted based on secondary, qualitative data. Secondary data was collected from provincial, state, and territorial government websites, to conduct a cross-country comparison. In order to be consistent, only data that could be

found on the provincial, state, and territorial government websites were included in this study. The Canadian provincial websites were searched for acts, policies, legislation, or agreements that came into force in 2015 or later, following the release of the TRC (2015) report. The Australian state and territorial government websites were searched for acts, policies, legislation, or agreements that came into force following the ALRC (2017b) report publication. The website of the ministry which oversees corrections in each jurisdiction was searched for annual reports, as well as reports on Indigenous corrections that were published following the respective national reports.

Google searches were also conducted in search of government data for each province, state, and territory. The search terms used to find data on the Canadian provinces were “Manitoba/Saskatchewan response to TRC”, “Manitoba/Saskatchewan Indigenous corrections”, and “Manitoba/Saskatchewan reconciliation”. Similarly, the search terms used to find data for the Australian state and territory were “Western Australia/ Northern Territory response to ALRC” and “Western Australia/Northern Territory Aboriginal corrections”, and “Western Australia/Northern Territory reconciliation”. Throughout this process, some non-government websites were accessed, however, only information that could be found and verified on government websites was included within the study.

The study intended to determine how national inquiries on Indigenous histories and overrepresentation in the criminal justice system have inspired changes to Indigenous correctional programming in their respective countries. Specifically, the study aimed to determine what changes have been made in regards to Indigenous correctional services and programs in Manitoba and Saskatchewan in response to the release of the TRC

(2015) report, and in Northern Territory and Western Australia in response to the ALRC (2017b) report. Therefore, inclusion criteria for the government sources to be analyzed required that the data had been published in the years following the release of these reports – 2015 for Canadian Provinces and 2017 for Australian states and territories.

This research study focused solely on publically available, government published legislation, plans, agreements, and reports to determine how the province, state, or territory responded to its national report. As a result, there may be initiatives that have been developed and implemented within the provinces and territories that were not made publicly available and are therefore not included within this study. Additionally, the thesis did not analyze any information that was not available on the provincial, state, or territorial government websites. Therefore, reports, inquiries, and initiatives conducted or implemented by third parties were not included. This may include, but is not limited to, the work of non-government agencies, as well as news and media outlets.

After the collection of data was completed, each act, report, plan, and agreement was analyzed looking for reference to the TRC (2015) or ALRC (2017b) reports. This analysis also looked for mention of changes to previously existing programs and services, as well as newly implemented programs and services, for Indigenous offenders since the release of said reports. After completing an examination of the data, a thematic analysis was then conducted to identify emerging themes and patterns within the responses.

A Grounded Theory (Glaser & Strauss, 1967) approach was used when completing the analysis. This inductive approach meant that the data was collected and analyzed, and the theory was developed from this process. The themes, or categories, arose from the data itself as they presented themselves, rather than being applied to the

data. In the case of this thesis, the themes arose based on the level of acknowledgement of the report, as well as Indigenous history, and the concrete actions that have been taken in response to the TRC (2015) or ALRC (2017b) report.

These categories are not mutually exclusive, rather they fall along a continuum from the most accountable, direct, and thorough response, to the absence of a public response. A *direct response* was identified as including an acknowledgement of the report, recognition of the history of Indigenous peoples, and the implementation of positive and lasting change aimed to improve the livelihood of the Indigenous population. At the other end of the continuum, the criteria *no public response* included a lack of acknowledgement of the report in legislation, reports, and implemented change. Provinces and territories in this category also did not have any evidence of newly implemented initiatives to reduce overrepresentation in the years since the national report was published. Falling along the middle of the continuum is *indirect response*, in which the province or territory has acknowledged the issue of overrepresentation within the criminal justice system and implemented change, but have not identified the TRC (2015) report or the ALRC (2017b) report, depending on the country, as a motivating factor. The most notable findings of the study for each province, state, and territory were then organized into Table 4.1 (see page 65). This table displays the total population of the province, state, or territory, its respective Indigenous population, the level of overrepresentation of Indigenous prisoners in custody, highlights acts, plans, reports, and agreements responding to the TRC (2015) or ALRC (2017b) report, and identifies the response category that the provincial, state, or territorial government was placed in.

## Chapter 4: Results

After completing a thematic analysis of the publicly available provincial government responses to the TRC (2015) report in Saskatchewan and Manitoba, and the territorial government responses to the ALRC (2017b) report in Northern Territory and Western Australia, it became apparent that the responses could be placed in one of three categories. The three categories were titled *direct response*, *indirect response*, and *no public response*. These categories fall upon a continuum, from the most direct and committed publicly available response, to the absence of publicly available data on the provincial or territorial response to the nationwide reports.

The first category of response was a *direct response* by the provincial or territorial government to the nationwide report. The responses that fit in this category included an acknowledgement of the history of colonization, as well as the resulting intergenerational effects and trauma. The response then acknowledged the report produced by either TRC (2015) or the ALRC (2017b), including their conclusions and calls to action and recommendations. Finally, a *direct response* outlined the actions that the province, state, or territory would take to comply with the respective calls to action or recommendations, and ultimately reduce the overrepresentation of Indigenous peoples in the justice system. One Canadian province and one Australian territory that were included in this study met the criteria for a *direct response*, Manitoba, Canada, and Northern Territory, Australia.

The second category identified when conducting the thematic analysis was an *indirect response*. In this case, there was no direct acknowledgement of the TRC (2015) or ALRC (2017b) report, or their calls to action or recommendations, respectively.

However, there were actions taken by the Provincial or Territorial government with the clearly stated intent to reduce the overrepresentation of Indigenous peoples within the criminal justice system. Western Australia was found to meet the criteria of an *indirect response.* Since the ALRC report was released in 2017, the Government of Western Australian has set goals and implemented a number of programs and services to reduce the number of Indigenous peoples in custody; however, the government has made no clear link with the ALRC (2017b) report when discussing its initiatives.

The third and final category that was identified throughout the thematic analysis was *no public response*. It is imperative to restate that the current study is based solely on government published data that is available online to the public. Thus, in stating that there was *no public response*, this indicates that no government response could be found on provincial or territorial government websites. In order to meet the criteria for the category of *no public response*, there must not have been any reports or responses published following the TRC (2015) or ALRC (2017) report, or information on new initiatives implemented following the release of these reports that are available online to the public. In the current study, Saskatchewan was not found to have any publicly available government data in response to the TRC (2015) report, therefore the province falls into the category of *no public response*.

The following sections will discuss how the governments of Manitoba, Saskatchewan, Northern Territory, and Western Australia publically responded to the national inquiries conducted in Canada and Australia. The publicly available government data that was used to classify each response will be discussed for each province, state and territory, in order of *direct response*, *indirect response*, and *no public response*.

**Direct Response – Manitoba, Canada**

Following the release of the TRC report in 2015, the Government of Manitoba has taken several steps in order to respond to the ninety-four calls to action included in the report; and specifically, to reduce the overrepresentation of Indigenous offenders in their provincial criminal justice system. The province directly acknowledges the work of the TRC (2015), its final report, and its calls to action, and the evidence of the Government's efforts to reduce overrepresentation of Indigenous peoples in their criminal justice system can be found in its actions. These actions include the enactment of a new Act, and the release of yearly progress reports, with the ultimate goal of progressing towards reconciliation.

**The Path to Reconciliation Act.** Following the release of the TRC's (2015) final report, the Manitoba Government responded by passing Bill 18 with unanimous support in March of 2016, thus enacting *The Path to Reconciliation Act* (Manitoba Indigenous and Municipal Relations, 2017). *The Path to Reconciliation Act* consists of seven components, which are: the preamble, a definition of reconciliation, identification of the four key principles of reconciliation, the establishment of a Minister role, commitment to developing a clear strategy, the annual progress report requirement, and a commitment to translate the Act (Manitoba Indigenous and Municipal Relations, 2017). The preamble lays out both the context for and the meaning and intent of, the Act. *The Path to Reconciliation Act* (s. 1(1)) then proceeds to define reconciliation as, "the ongoing process of establishing and maintaining mutually respectful relationships between Indigenous and non-Indigenous peoples in order to build trust, affirm historical agreements, address healing and create a more equitable and inclusive society." *The Act*

then establishes four key principles that must be valued by the government in its efforts to reconcile its relationships with Indigenous peoples and communities. The principles are *respect*, of Indigenous peoples, nations, traditions, languages, and culture; *engagement*, with Indigenous communities and peoples; *understanding* of current relationships with Indigenous communities, and the history of these relationships; and *action*, requiring clear and progressive actions to better both current and future relationships within Indigenous communities and peoples (*The Path to Reconciliation Act*, s. 2).

A ministerial role is established by *The Act* (s. 3(1)), which is given the responsibility of directing the government on its path towards reconciliation. The commitment to develop a clear strategy allocates the responsibility of its development to the minister responsible for reconciliation. *The Act* lists seven guidelines for developing the strategy, one of which specifically requires that the strategy be steered by the TRC's (2015) calls to action. The sixth key component requires that the minister responsible for reconciliation produce a report each fiscal year detailing the efforts that have been made by the Manitoba Government to progress efforts of reconciliation. The annual progress report must be presented in the Legislative assembly, be made publicly available, and the report or its summary must be translated into Cree, Dakota, Dene, Inuktitut, Michif, Ojibway and Oji-Cree (*The Path to Reconciliation Act*, s. 5). The final key component of *The Act* (s. 6) is that is must be translated into the previously listed seven Indigenous languages within thirty days of its enactment. As the sum of each of these components, *The Path to Reconciliation Act* is intended to be "a transparent mechanism to monitor and evaluate the measures taken by the government of Manitoba to advance reconciliation,

including the measures taken to engage Indigenous nations and Indigenous peoples in the reconciliation process" (Manitoba Indigenous and Municipal Relations, 2017, p. 8).

**Annual Progress Report 2015-2016.** In compliance with section five of *The Path to Reconciliation Act*, Manitoba Indigenous and Municipal Relations released the first annual progress report in June of 2016, for the 2015-2016 fiscal year. The report begins by outlining the components and intent of the new Act, highlighting it as the first piece of legislation on the topic of reconciliation in Canada. Manitoba Indigenous and Municipal Relations (2016) then discuss the approach that the province of Manitoba plans to take in its commitment to reconciliation. The report recognizes the history of Indigenous people in Canada, specifically in regards to the IRS system, and its lasting impacts. It then goes on to acknowledge that reconciliation can only be achieved through an equal partnership and collaborative effort between the government and Indigenous Nations to determine the steps that must be taken. Manitoba Indigenous and Municipal Relations (2016) then go on to list the activities that have been engaged in by the provincial government up until the 2016-2017 fiscal year, as part of its commitment to reconciliation. As the report was published three months after *The Path to Reconciliation Act* received royal assent, the activities are few and preliminary. Some of the activities included the appointment of cabinet ministers, translating *The Act* into Indigenous languages, and initial meetings with Indigenous organizations, as well as with various councils and assemblies (Manitoba Indigenous and Municipal Relations, 2016).

The report concluded with a list of the activities that the government would be commencing in the 2016-2017 fiscal year. The central priority for the 2016-2017 fiscal year was to work to develop an initial engagement strategy as a means of receiving input

from Indigenous leaders on the reconciliation strategy. Once again highlighting the government's commitment to reconciliation, Manitoba Indigenous and Municipal Relations (2016) listed several objectives that the Manitoba Government was actively working with Indigenous nations to meet. While each of the objectives listed is in line with the ninety-four calls to action of the TRC (2015), none of them specifically address calls to action numbers thirty or thirty-six, which are the three calls to action included within the scope of the current study.

**Annual Progress Report 2016-2017.** The second annual progress report was released by Manitoba Indigenous and Municipal Relations in June of 2017, for the 2016-2017 fiscal year. This report begins with an executive summary of *The Path to Reconciliation Act*, and highlights the Manitoba Government's efforts to advance reconciliation by 'addressing legacies', 'reconciling for the future', and 'looking forward' (Manitoba Indigenous and Municipal Relations, 2017, p. 4-7). The report then provides the historical background of *The Path to Reconciliation Act*, referencing the TRC's (2015) final report, explaining the development and enactment of *The Act*, and highlighting the Manitoba Government's commitment to reconciliation by acknowledging and addressing legacies. When describing the progress made in the previous fiscal year, Manitoba Indigenous and Municipal Relations (2017) classifies the efforts under two of the categories included in the executive summary – 'addressing legacies' and 'reconciling for the future'. The overrepresentation of Indigenous peoples in the criminal justice system, and more specifically the correctional system, is discussed under both of these subheadings.

In ‘addressing legacies’, the report acknowledges that high levels of imprisonment in the Indigenous population can be the result of colonization, the IRS system, and the intergenerational trauma that exists in the Indigenous population (Manitoba Indigenous and Municipal Relations, 2017). In response to this, it was reported that the government of the province is collaborating with Indigenous communities to support offenders, as well as to their families, communities, and the victims of crime. Specific to the scope of this study, the report states that Manitoba Justice has developed a partnership with Justice Canada, in which both entities afford funding to Indigenous organizations that offer restorative justice services in Manitoba. Additionally, another objective listed is to improve resources and programs available for offenders on probation in remote areas (Manitoba Indigenous and Municipal Relations, 2017).

Under the subheading ‘reconciling for the future’, specific to the current study, Manitoba Government aims to increase knowledge and training to promote reconciliation by requiring all correctional staff to attend courses that increase knowledge and understanding of Indigenous culture (Manitoba Indigenous and Municipal Relations, 2017). Efforts to increase Indigenous employment in corrections include increasing the number of Indigenous staff members in both community and custodial corrections, and the creation of an Indigenous Staff Advisory Group. Additionally, efforts to make the correctional system more responsive to Indigenous culture include: allowing for Indigenous nations and communities to create culturally responsive, alternative means of sentencing and incarceration; increasing cultural awareness, personal development, and healing in incarcerated Indigenous individuals through the Culturally Appropriate Program; and providing traditional services and care in correctional centres (Manitoba

Indigenous and Municipal Relations, 2017). Manitoba Indigenous and Municipal Relations (2017) conclude the annual progress report with a section titled 'looking forward'. In this section, it is once again acknowledged that reconciliation can only be achieved through a collaborative effort with Indigenous communities.

**Annual Progress Report 2017-2018.** The annual progress report for the 2017-2018 fiscal year was released in September of 2018 (Manitoba Indigenous and Northern Relations, 2018). This report begins similarly to the 2016-2017 progress report (Manitoba Indigenous and Municipal Relations, 2017), providing an executive summary of *The Act*, and a background of the TRC report and the resulting enactment of *The Act*, once again acknowledging the commitment of Manitoba Government to reconciliation through engagement with Indigenous communities (Manitoba Indigenous and Northern Relations, 2018). The 2017-2018 report is laid out in three sections, titled 'legacies', 'reconciliation', and 'looking forward'; however, it is different from the two prior reports in that the subsections are organized under the same headings as the TRC's (2015) calls to action.

The 'justice' subsection that details all of the progress made to date in responding to calls to action twenty-five through forty-two is included within the 'legacies' section. In response to call to action number thirty, to reduce the overrepresentation of Indigenous people in custody, the Manitoba Government developed the *Criminal Justice Modernization Strategy* (Manitoba Indigenous and Northern Relations, 2018). This strategy will be further discussed as part of the Manitoba Government's *direct response* to the TRC (2015) report. Addressing call to action number thirty-six, providing programs and services that are culturally relevant to Indigenous offenders, Manitoba

Indigenous and Northern Relations (2018) reported that the provincial government offers cultural supports, including the ability to participate in cultural ceremonies, the government has partnered with Indigenous communities to improve services and programs for offenders on probation in remote areas, continues to consult with the Corrections' Aboriginal Staff Advisory Group, and provides cultural awareness training to frontline corrections personnel (Manitoba Indigenous and Northern Relations, 2018). The 'looking forward' section of the 2017-2018 annual progress report reiterates the need for relationships with Indigenous peoples and communities that are founded on respect in order to progress towards reconciliation (Manitoba Indigenous and Northern Relations, 2018).

**Annual Progress Report 2018-2019.** The fourth annual progress report which details the 2018-2019 fiscal year, and is the most recent progress report published to-date, was released in September of 2019 (Manitoba Indigenous and Northern Relations, 2019). The report, much like its two predecessors, beings with an executive summary and background. The layout of the 2018-2019 annual report is similar to that of the 2017-2018 report in that it is organized into the same categories as the TRC (2015) calls to action; however, the more recently published report is also categorized into new initiatives and ongoing initiatives for each section.

The subsection on justice in the 'Legacies – New Initiatives' section of the report details efforts that have been introduced in the 2018-2019 fiscal year. New efforts to eliminate overrepresentation of Indigenous individuals in custody, in compliance with the TRC's (2015) thirtieth call to action, includes the Manitoba Government's investment in the Bear Clan Patrol 2019 (Manitoba Indigenous and Northern Relations, 2019). The

Bear Clan Patrol is a community-based initiative that aims to provide crime prevention and intervention, in line with their mission to "provide restoration and maintenance of harmony within the community" (Bear Clan Patrol Inc., n.d.). While the 2018-2019 annual progress report does list the numerous efforts of the Manitoba Government to provide culturally relevant programs to Indigenous offenders in response to call to action thirty-six, all but one of the newly implemented initiatives are focused on courtroom processes and thus outside the scope of this study. The initiative that applies to the current study is the creation of a new role within Manitoba Justice, titled the Director of Indigenous Relations. The responsibilities of this new role include building and maintaining positive relationships with Indigenous peoples and communities for consultation and perspective in new initiatives (Manitoba Indigenous and Northern Relations, 2019). While this initiative is not specific to incarceration or corrections, it has the ability to affect Indigenous offenders in all stages of the criminal justice system.

The 'Legacies – Ongoing Initiatives' section details how the Manitoba Government continues to utilize previously implemented initiatives to continue its commitment to reconciliation. Ongoing initiatives specific to justice include the continued use of, and reference to, the *Criminal Justice Modernization Strategy* (Manitoba Justice, 2018) as a means of reducing the overrepresentation of Indigenous offenders in custody. Efforts to provide Indigenous offenders with culturally relevant programs and services, specific to corrections, include: cultural supports in the form of Elder support and cultural ceremonies; the Reclaiming Our Identity program (formerly the Culturally Appropriate Program); improving probation resources in remote communities, continued consultation with the Corrections' Aboriginal Staff Advisory

Group; requiring correctional officers and probation officers to take Aboriginal Awareness training; and educating Manitoba Justice senior management personnel on issues and challenges faced by Indigenous individuals in the justice system (Manitoba Indigenous and Northern Relations, 2019). Finally, ongoing initiatives to provide alternatives to incarceration include the continued collaboration with Justice Canada to Indigenous programs and community-based restorative justice programs, as well as funding additional restorative-focused strategies, services, and commitments within the province (Manitoba Indigenous and Northern Relations, 2019). Once again, Manitoba Indigenous and Northern Relations (2019) conclude their report by acknowledging that the intent of *The Path to Reconciliation Act*, and the resulting annual reports, is to analyse and track the progress made by Manitoba Government and Manitoba Justice towards reconciliation. Further, the report acknowledges the need for respectful collaborative relationships with Indigenous peoples and communities to move towards reconciliation, and restates the Manitoba Government's commitment to its reconciliation strategy.

**Criminal Justice Modernization Strategy (2018).** As previously mentioned, the Manitoba Government released the *Criminal Justice Modernization Strategy* in March of 2018 (Manitoba Justice, 2018). This strategy begins with an account of the current state of criminal justice in Manitoba, as of 2018. This includes an acknowledgment that the Indigenous population constitutes eighteen percent of the general population, and seventy-four percent of the incarcerated population, and that two-thirds of the incarcerated population is on remand (Manitoba Justice, 2018).  It then outlines Manitoba Justice's four key objectives. The four objectives are 'crime prevention', 'targeted resources for serious criminal cases', 'more effective use of restorative justice' especially

in the cases of Indigenous offenders, and 'responsible reintegration' (Manitoba Justice, 2018, p. 3-6). As the current study is observing government responses to the TRC (2105) report and resulting changes to correctional services and programs, the restorative justice objective will be the primary focus in the discussion of the *Criminal Justice Modernization Strategy* (Manitoba Justice, 2018). When expanding on this objective, Manitoba Justice (2018) stated that restorative justice is a culturally responsive alternative in the case of most Indigenous offenders. Further, the strategy acknowledged the TRC's (2015) call to reduce Indigenous over-representation in custody and suggested that effective restorative justice is one means of achieving this goal. In discussing results, Manitoba Justice (2018) stated that there has been an increase in the use of restorative justice options as the result of collaborative partnerships with Indigenous communities.

**Direct Response – Northern Territory, Australia**

Northern Territory responded directly to the ALRC (2017b) inquiry and its recommendations by developing the *Pathways to Northern Territory Aboriginal Justice Agreement* (Northern Territory Government, Department of the Attorney-General and Justice, 2019b) and the draft of the *Northern Territory Aboriginal Justice Agreement 2019-2025* (Northern Territory Government, Department of the Attorney-General and Justice, 2019a) to be distributed for consultation.

**Pathways to Northern Territory Aboriginal Justice Agreement.** The *Pathways to Northern Territory Aboriginal Justice Agreement* (Northern Territory Government, Department of the Attorney-General and Justice, 2019b) was created as a companion document to provide background, context, and evidence that were used to create the drafted agreement. The first of the three goals outlined in the *Pathways to Northern*

*Territory Aboriginal Justice Agreement* is to reduce both the imprisonment and reoffending rates in the Indigenous population of Northern Territory (Northern Territory Government, Department of the Attorney-General and Justice, 2019b). Recognizing that Northern Territory has the highest rates of overrepresentation of Indigenous prisoners in its justice system, the Northern Territory Government, Department of the Attorney-General, and Justice (2019b) identify reducing imprisonment and recidivism rates as a primary focus. Further, the Department further acknowledged the previous work of the Royal Commission into Aboriginal Deaths in Custody (Johnston, 1991), which identified a dual-level approach to reducing overrepresentation. This includes targeting “factors within the criminal justice system that contribute to the high rates of incarceration of Aboriginal people” and “underlying factors which bring Aboriginal people into contact with the criminal justice system” (Johnston as cited in Northern Territory Government, Department of the Attorney-General and Justice, 2019b, p. 34).

The Department of Justice reported that forty-three percent of Indigenous offenders in the Northern Territory were serving sentences of less than a year. These short sentences to incarceration provide offenders with less opportunity for rehabilitation through programming, which may result in higher levels of reoffending (Northern Territory Government, Department of the Attorney-General and Justice, 2019b). Indigenous women who are incarcerated are found to experience a lack of available programming that address their unique needs, including histories of abuse and trauma, mental health issues, substance use, and lower levels of education and employment (Northern Territory Government, Department of the Attorney-General and Justice, 2019b).

When Indigenous prisoners are able to access programs while incarcerated, the programs are not found to be responsive to the Indigenous offenders. The Pathways to the Agreement document includes findings from one hundred and twenty consultations with Indigenous communities, leaders, and representatives. The evidence collected through these findings suggested that Indigenous prisoners who have the opportunity to participate in programs while in custody are not rehabilitated. The programs do not consider the unique circumstances of Indigenous prisoners or meet their needs, and barriers to communication and engagement are evident (Northern Territory Government, Department of the Attorney-General and Justice, 2019b).

As stated within the literature review chapter, the ALRC (2017b) reported that the best practices for prison programs included programs that were culturally appropriate and targeted to the unique needs of Indigenous offenders, are therapeutic in nature, and offer holistic support, accompanied by case management that is specific to the prisoner. Northern Territory Government, Department of the Attorney-General and Justice (2019b) echoed these comments within their section on prison programs, while adding that their consultations found that “program delivery should be conducted by professionals and organisations with high levels of cultural competency and demonstrated experience working with Aboriginal Terriorians [*sic*]” (p. 66). Additionally, prisoners stated that involving family members in the delivery of programs would lead to more positive outcomes (Northern Territory Government, Department of the Attorney-General and Justice, 2019b).

**Northern Territory Aboriginal Justice Agreement 2019-2025.** In the draft of the Agreement, Northern Territory Government, Department of the Attorney-General and

Justice (2019a) state that all signatories of the document share the vision "for Aboriginal Territorians to live safe, fulfilling lives and be treated fairly, respectfully and without discrimination, and for Aboriginal offenders to have the opportunity to end their offending" (p. 8). This vision is accompanied by seven guiding principles, including building trusting relationships between the government and Indigenous peoples, maintaining values of "honesty, integrity, transparency and accountability" when collaborating, respecting the diversity of different Indigenous groups, maintaining high standards for cultural competency and respect of Indigenous knowledge, acknowledging and respecting the strength of Indigenous communities, encouraging and advocating for Indigenous autonomy and leadership, ensuring equal rights for Indigenous persons, and to "eliminate unfair treatment including conscious and unconscious bias" (Northern Territory Government, Department of the Attorney-General and Justice, 2019a, p. 9).

The first aim of the drafted agreement was the same as that of the pathways to the agreement document – to reduce both the imprisonment and reoffending rates in the Indigenous population of Northern Territory. In the draft agreement (Northern Territory Government, Department of the Attorney-General and Justice, 2019a), this aim is accompanied by eleven strategies, three of which are in line with the ALRC's (2017b) recommendation 9.1. Strategy nine is to "further develop correctional services therapeutic programs", by evaluating existing programs and developing new programs addressing the causes of offending behaviour and preparing prisoners for reintegration (Northern Territory Government, Department of the Attorney-General and Justice, 2019a, p. 11). Strategy ten is to "strengthen tailored and targeted case management for offenders" with the goal of providing more access to employment, therapy, and trauma-informed services

for Indigenous prisoners (Northern Territory Government, Department of the Attorney-General and Justice, 2019a, p. 11). Finally, strategy eleven is to "expand prison and diversion programs for Aboriginal women" to meet their specific and unique needs, and to reach women who are on remand or incarcerated for short periods of time (Northern Territory Government, Department of the Attorney-General and Justice, 2019a, p. 11). Additionally, one strategy under aim three, which aims to better justice responses and services for Indigenous peoples, is relevant to the current study. Strategy sixteen is to "redesign key service delivery models" to make these services more accessible to Indigenous individuals, including relationship and parenting services, as well as substance misuse, grief, trauma, and other mental health services (Northern Territory Government, Department of the Attorney-General and Justice, 2019a, p. 13).

The draft of the Northern Territory Aboriginal Justice Agreement 2019-2025 (Northern Territory Government, Department of the Attorney-General and Justice, 2019a) states that the agreement will be implemented in two stages. The first stage involves the implementation of the Agreement, under the guidance and advice of numerous committees and cabinets. The second stage of the agreement plans to include a review of the Agreement, strengthening partnerships and governance structures where possible. The document also states that the Northern Territory Government, Department of the Attorney-General and Justice (2019a) was accepting submissions on the draft until March 31, 2020. No information that was published following this deadline could be found on the Northern Territory Government website.

**Indirect Response – Western Australia, Australia**

Western Australia was placed in the middle of the continuum, under the label of *no direct response*. In the years since the release of the ALRC (2017b) report, Western Australia made it a priority to reduce the overrepresentation of Indigenous people in custody within their state. Western Australia set the goal of reducing the number of Indigenous individuals in custody from its 2017-2018 count of 2,591 by twenty-three per cent by 2028-2029 (State of Western Australia, 2019). Since 2017, the state has also developed and implemented initiatives aimed at reducing the level of overrepresentation of Indigenous offenders in the criminal justice system; however, there has been no clear connection made between the ALRC (2017b) report and these initiatives. Western Australia's *indirect response* will be displayed through analyses of the Government of Western Australia, Department of Justice's (2018) Annual Report 2017-2018, Annual Report 2018-2019 (Department of Justice, 2019a), and its Reconciliation Action Plan 2018-2019 to 2020-2021 (Department of Justice, 2019b).

**Annual Report 2017-2018.** Western Australia's Department of Justice's Annual report for the 2017-2018 fiscal year (Department of Justice, 2018) listed a number of programs and services that are made available to prisoners in their custody. The education and training programs included: education programs and counselling, specific equity programs for both women and Indigenous offenders, vocational training programs, driver education, job-seeking programs, employment placements, and an emotional intelligence program. Services available to prisoners included career counselling, employability and job preparedness skills, post-placement support, and employment services (Department of Justice, 2018, p. 17). In addition, the Department of Justice

provides programs that target specific criminogenic needs and behaviour related to offending, including substance use and cognitive skills programs, as well as programs that target specific offences, such as general, violent and sexual crimes (Department of Justice, 2018). The annual report also stated that the Department of Justice had worked to increase and improve the Aboriginal-specific services that provide support to Indigenous offenders, as a means of addressing their overrepresentation within the justice system (Department of Justice, 2018). Western Australia's Justice Department also implemented the Aboriginal Visitors Scheme (AVS), which is an initiative that provides prisoners with "culturally appropriate support in order to prevent suicide and self-harm amongst Aboriginal people in adult prisons" (Department of Justice, 2018, p. 18). This service is provided to prisoners who have been referred by prison staff and AVS management. While the Department of Justice's Annual report for the 2017-2018 fiscal year (Department of Justice, 2018) discussed a number of programs and initiatives, some of which were specifically developed and implemented for Indigenous offenders, it did not mention the ALRC's (2017b) inquest into the incarceration rates of this population.

**Annual Report 2018-2019.** In the 2018-2019 Annual Report released by Western Australia's Department of Justice year (Department of Justice, 2019a) again listed the programs and services that are available for prisoners. The report listed the same educational and training programs that were included within the 2017-2018 Annual Report year (Department of Justice, 2018); however Indigenous Language and Culture programs were mentioned, in place of Indigenous-specific equity programs. It was not specified whether these programs were developed in consultation or collaboration with Indigenous communities, as the ALRC (2017b) recommended. It was, however, specified

that an Aboriginal Services Committee was reinstated at the Greenough Regional Prison as the result of an incident in 2018. This Committee, working with the Indigenous community, aims to ensure that culturally responsive services are available to Indigenous prisoners within the institution (Department of Justice, 2019a). The Department of Justice (Department of Justice, 2019a) reported that of the 8,103 prisoners that participated in an educational or vocational training program in the 2018-2019 fiscal year, forty per cent were Indigenous. The Department also maintained that the AVS service remained active, in addition to a Peer Support Program and Prison Support Officers, continuing to provide culturally responsive support to Indigenous prisoners. Programs targeting specific offending and specific needs, as previously discussed, also continued to be delivered to prisoners (Department of Justice, 2019a). The 2018-2019 Annual Report of Western Australia's Department of Justice (2019a) did not include any reference to the ALRC (2017b) inquiry, or any of its recommendations.

**Reconciliation Action Plan.** Western Australia's Reconciliation Action Plan (the Plan) for 2018-2019 to 2020-2021 (Department of Justice, 2019b) aims to serve both the community and its government with justice services that are "high quality and accessible" (p. 5). Further, the Plan states that the Department of Justice's "reconciliation aim is to provide these services in a manner that is equitable, responsive and relevant to Aboriginal people" (Department of Justice, 2019b, p. 5). The Plan then proceeds to list nineteen clear actions, each of which are assigned deliverables, timelines, and responsibilities.

As the focus of the current study is to analyse the territorial response to recommendations 9-1 and 16-1 made by the ALRC (2017b), it is imperative to highlight actions number three, four, and eleven. Action number three is to "maintain an

Aboriginal Services Committee in each prison and detention centre to provide a focus on the appropriate management and delivery of services to Aboriginal prisoners and detainees" (Department of Justice, 2019b, p. 8). The Department of Justice aims to achieve this goal by requiring the Committee to function under Terms of Reference, with agenda items and templates for reporting, requiring the Committee to convene at least four times each year, to develop and implement service plans and provide progress updates, review its membership each year and report the outcome, and have its performance reviewed for the Superintendents and Deputy Commissioner. Action number four is to "develop and maintain mutually beneficial relationships with Aboriginal people, communities, and organizations to support positive outcomes" (Department of Justice, 2019b, p. 8). Deliverables for this action include the establishment of an engagement plan, formulating guiding principles in consultation with Indigenous organizations, and partnering with Indigenous peoples, communities, and organizations. Finally, the eleventh action is to "investigate opportunities to further develop the Aboriginal Visitors Scheme" (Department of Justice, 2019b, p. 12). This will be completed by evaluating its ability to adhere to recommendations made by the Royal Commission into Aboriginal Deaths in Custody (Johnston, 1991), and making improvements to the cultural responsiveness of the service based on the findings of the evaluation (Department of Justice, 2019b).

**No Public Response – Saskatchewan, Canada**

Saskatchewan has been placed at the *no public response* end of the continuum as the result of an absence of provincial government response to the TRC (2015) final report. This is combined with the absence of newly introduced correctional services and

programs in the years since the report was released to better meet the needs of Indigenous offenders. The Premier of Saskatchewan released a statement on behalf of the province in June of 2015 (Government of Saskatchewan, 2015), acknowledging the work of that was performed by the TRC and the strength of the survivors who shared their story (2015). Within this statement, the Premier also recognized the history and legacy of the IRS system, and the impacts on families in Saskatchewan. In response, the Premier committed to establishing a team involving various ministries to review and analyse the work of the TRC (2015) and formulate solutions that would put the province on the path to reconciling with its Indigenous population (Government of Saskatchewan, 2015). Finally, the statement reported that Saskatchewan's First Nations Minister had been in contact with the Assembly of First Nations National Chief.

While the Premier of Saskatchewan made promising commitments in his statement (Government of Saskatchewan, 2015), publicly available government documents as of 2020 do not reveal that any of these commitments came to fruition in the five years following the release of the TRC (2015) report. An analysis of Saskatchewan's Ministry of Justice annual Ministry Plans, Government Directions, and Annual reports from 2015-2016 through 2020-2021 do not reveal that any initiatives have been introduced to address the issue of Indigenous overrepresentation in the justice system. Additionally, Saskatchewan's Plan for Growth from 2020 through 2030 (Government of Saskatchewan, 2019b) does not reveal that the government is striving towards reducing Indigenous overrepresentation in the justice system, or towards reconciliation more broadly. No documents or reports specifically acknowledging or responding to the TRC

(2015) report could be found on the provincial government website, or with general Google searches.

**2015-2016.** An analysis of the Ministry Plan (Ministry of Justice, 2015), Government Direction (Government of Saskatchewan, 2015), and Annual Report (Ministry of Justice, 2016a) was completed for the 2015-2016 fiscal year. This analysis determined that there were no mentions of the TRC (2015) report, Indigenous peoples or communities, or of reconciliation efforts in either the Ministry Plan (Ministry of Justice, 2015) or the Government Direction (Government of Saskatchewan, 2015). In the Ministry of Justice's Annual Report (Ministry of Justice, 2016a) for the 2015-2016 year, a single reference to the Missing and Murdered Indigenous Women and Girls was made. The Ministry stated that it is working towards improving abilities to find missing youth, and seeking funding to participate in a cross-provincial effort to locate Missing and Murdered Indigenous Women and Girls (Ministry of Justice, 2015). The Annual Report also made mention of a number of efforts and initiatives within the justice system, including Aboriginal Policing, Aboriginal Courtworker positions, Aboriginal Law, and family and victim services (Ministry of Justice, 2015); however, there is no mention of the TRC (2015) report, or information on any programs or services that existed for Indigenous offenders within the provincial correctional service.

**2016-2017.** The Ministry of Justice's (2016b) Ministry Plan for the 2016-2017 fiscal year did not contain any mention of Indigenous corrections, or programs or services available to Indigenous peoples who are incarcerated. Throughout the report, there was also no mention of the TRC (2015) report, or reconciliation in a broader sense. The Government Direction (Government of Saskatchewan, 2016) for the same 2016-2017

fiscal year referred to programs and services for Indigenous peoples and offenders in the community, such as the Aboriginal Courtworker position and the Aboriginal Policing initiative; however, the Direction did not discuss any programs or services within corrections, the TRC (2015) report, or reconciliation efforts Direction (Government of Saskatchewan, 2016). Finally, the Annual Report produced by the Ministry of Justice (2017a) once again discussed a number of efforts that were made in regards to Indigenous justice. This included partnerships and community policing efforts within First Nations communities, references to Aboriginal Policing, Aboriginal Law, and the Aboriginal Courtworker position. Once again, the Ministry of Justice's Annual Report was silent on Indigenous overrepresentation in corrections and failed to address the TRC (2015) report or reconciliation efforts (Ministry of Justice, 2017a).

**2017-2018.** No Government Direct or Annual Report could be found on the Government of Saskatchewan website for the 2017-2018 fiscal year. The Ministry of Justice's Plan for the 2017-2018 fiscal year included a 'Key Action' to "establish partnerships with Indigenous communities for the delivery of evidence-based policing and community safety models" (Ministry of Justice, 2017b, p. 4). The Ministry Plan did not include any reference of the TRC (2015) report, efforts to reconcile with Indigenous peoples and communities, Indigenous overrepresentation in the justice system, or programs and services for incarcerated Indigenous individuals (Ministry of Justice, 2017b).

**2018-2019.** The Ministry of Justice's Ministry Plan for the 2018-2019 fiscal year (Ministry of Justice, 2018) included a goal to improve the quality of life for the people of Saskatchewan by providing support to vulnerable individuals, including victims of crime.

The report stated that this was in line with the calls to action of the TRC (2015), and also supported the federal government's inquiry into Missing and Murdered Indigenous Women and Girls. Additionally, the report included a goal of improving Saskatchewan's economy which would be achieved in part through actions to "further develop partnerships including First Nations geared for increasing education, trades, skills development and employment opportunities for offenders" (Ministry of Justice, 2018, p. 3). It was not specified whether this applied to offenders in incarceration, and there was no specific link made to the TRC (2015) report or its calls to action. The Government Direction for the 2018-2019 fiscal year (Government of Saskatchewan, 2019a) did not speak to Indigenous overrepresentation in the criminal justice system, the TRC (2015) report, or efforts to achieve reconciliation with the Indigenous population more generally. The Annual Report for the fiscal year (Ministry of Justice, 2019a) made mention of a number of programs and services for Indigenous peoples, including partnerships with First Nations, Aboriginal Policing, Aboriginal Courtworkers, and Indigenous Resource Officers as a part of Police-based victim services. The Annual Report (Ministry of Justice, 2019a) also listed a number of actions that have been taken to support the Government of Canada's inquiry into Missing and Murdered Indigenous Women and Girls (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019). As a means of achieving safer and more secure communities, the Government of Saskatchewan, in partnership with the Royal Canadian Mounted Police (RCMP) made it a priority to develop "healthier and safer Indigenous communities through reconciliation" (Ministry of Justice, 2019a, p. 11) Finally, the report included a list of the actions taken to support their goal of increasing education, trades, skills development and employment

opportunities for offenders, including partnerships with Saskatchewan Indian Institute of Technology, Habitats for Humanity, and Custody Services to provide offenders with hands-on experience (Ministry of Justice, 2019a). Once again, the report does not make any connection between this initiative and the TRC (2015) report or its calls to action. The report does not discuss any efforts that have been taken to respond to calls to action thirty or thirty-six.

**2019-2020.** The Ministry of Justice's Plan for the 2019-2020 fiscal year (Ministry of Justice and Attorney General & Ministry of Corrections and Policing, 2019b) included a key action to continue to work with Public Safety Canada, and Indigenous communities, to continue to develop Indigenous policing and funding models. The Government of Saskatchewan also acknowledged the National Inquiry on Missing and Murdered Indigenous Women and Children and Saskatchewan's provincial response and committed to continue making changes to its justice system in response (Ministry of Justice and Attorney General & Ministry of Corrections and Policing, 2019b). A strategy to improve the reintegration of offenders was also included within the Ministry plan for the 2019-2020 fiscal year, but no key actions addressed the unique circumstances and challenges of Indigenous offenders. There was no mention of the TRC (2015) report, its calls to action, or Indigenous corrections made within the 2019-2020 Ministry Plan (Ministry of Justice and Attorney General & Ministry of Corrections and Policing, 2019b). The Government Direction for the 2019-2020 fiscal year did not include any reference to the TRC (2015) report, the calls to action, or Indigenous corrections within the province of Saskatchewan (Government of Saskatchewan, 2019a). There was no

annual report for the 2019-2020 fiscal year published on the Government of Saskatchewan website.

**2020-2021.** No Government Direction has yet been released for the 2020-2021 fiscal year, and the Annual Report is not yet available. The Ministry Plan for the 2020-2021 fiscal year states that one Government Goal for the year is to increase the public's confidence in its provincial justice system, which the Ministry states is in line with the TRC (2015) calls to action. The Ministry states that this will be achieved through increased public knowledge and understanding of their rights and obligations, and will be measured through the rates of participation of witnesses and victims in criminal trials (Ministry of Corrections and Policing & Ministry of Justice and Attorney General, 2020). The Plan for the 2020-2021 year also states that the Ministry will be allocating a portion of their budget to increase resources under the First Nations Community Policing contract, which was made with Public Safety Canada (Ministry of Corrections and Policing & Ministry of Justice and Attorney General, 2020). While these community-based efforts are promising, there is no acknowledgement of Indigenous overrepresentation in the justice system made within the Plan, nor are there any initiatives for Indigenous prisoners discussed.

**Saskatchewan's Growth Plan.** Saskatchewan's Growth Plan (Government of Saskatchewan, 2019b) sets out numerous goals for the government to achieve by the year 2030 across all ministries. This included a list of twenty actions for the province to take in the 2020's, as well as a list of thirty goals that the province has set out to achieve by the year 2030. A page on the Government of Saskatchewan's (n.d.) website states that the province's plan for growth, in addition to ministry strategies, is in line with numerous

TRC (2015) calls to action, including engaging Indigenous peoples in the province’s economic development, and increasing Indigenous peoples’ participation in the workforce. The Government of Saskatchewan (n.d.) states that these calls to action will be answered through sustaining the province’s growth and opportunity and addressing the challenges associated with its growth. Additionally, it states that its Plan for Growth (Government of Saskatchewan, 2019b) will improve the quality of life of its population by expanding culturally-responsive and restorative justice efforts. An examination of the Plan for Growth (Government of Saskatchewan, 2019b) found that the province aims to increase Indigenous participation in the economy as one of its actions for the 2020s, and to increase Indigenous participation in the natural resource industries as one of its goals for 2030. The analysis did not find any discussion of developing justice approaches, overrepresentation in the justice system, or of Indigenous incarceration more specifically.

**Table 1: Summary of Findings**

| **Province/State/ Territory** | **Manitoba** | **Northern Territory** | **Western Australia** | **Saskatchewan** |
|---|---|---|---|---|
| Total population | 1,240,695 (as of 2016) | 245,678 (as of 2016) | 2,555,978 (as of 2016) | 1,070,560 (as of 2016) |
| Indigenous population | 223,310 (18%) (as of 2016) | 74,546 (30.3%) (as of 2016) | 100,512 (3.9%) (as of 2016) | 175,015 (16.3%) (as of 2016) |
| Overrepresentation of Indigenous peoples in custody | 75% of admissions to custody in 2017/18 | 84% of daily count in prison in 2017 | 38.8% of daily count in prison in 2017 | 74% of admissions to custody in 2017/18 |
| Government initiatives made publicly available since TRC/ALRC report released | Enactment of *The Path to Reconciliation Act* | Northern Territory Aboriginal Justice Agreement | Reconciliation Action Plan | No data publicly available |
| Supplementary reports on reconciliation efforts | Annual progress reports detailing reconciliation efforts, as required by The Act | *Pathways* companion document detailing consultations and research done to develop the Agreement | Western Australia Corrections Annual Report outline efforts made to support Indigenous prisoners | No data publicly available |
| Acknowledgement of TRC/ALRC report in the data? | Yes | Yes | No | N/A |
| Response category | Direct response | Direct response | Indirect response | No public response |

## Chapter 5: Discussion and Conclusion

This thesis sought to compare how the governments of the Canadian provinces and Australian states and territories with the highest levels of Indigenous overrepresentation in custody responded to their respective TRC (2015) and ALRC (2017b) national reports. A comparative analysis of secondary data was conducted to compare Manitoba and Saskatchewan's responses to calls to action thirty and thirty-six, with the responses of Northern Territory and Western Australia to recommendations 9-1 and 16-1.

Upon completing a comparative, thematic analysis of the responses to the national reports, the key finding of this thesis was that there were three categories of responses that fall along a continuum. These categories were titled *direct response*, *indirect response*, and *no public response*, ranging from the most thorough and accountable response to the least, based solely on publically available data found on the provincial, state, and territorial government websites. Response categories varied within Canada, within Australia, and between Canada and Australia. This finding suggests that the provinces, states, and territories in both countries have the independent responsibility of responding to the TRC's (2015) calls to action and ALRC's (2017b) recommendations that fall under their authority; including issues of overrepresentation within their criminal justice systems. It was previously acknowledged that federal government correctional legislation and policy may influence that at the provincial and territorial level; however, the changes that have been made by the Manitoba provincial government suggest that the provincial and territorial governments do not need to wait for federal government direction. As the TRC (2015) calls to action call upon the provincial and territorial

governments to commit to making change to advance reconciliation efforts, each province and territory has an independent responsibility to respond.

The TRC (2015) and the ALRC (2017b) both highlighted the importance of reducing the overrepresentation of the Indigenous population within the criminal justice system in its entirety and specifically within corrections. Additionally, the TRC's (2015) thirty-sixth call to action, and recommendation 16-1 of the ALRC (2017b) both call for partnerships and collaboration between the governments and Indigenous peoples. This thesis contributes to the greater body of literature by evaluating the changes that Canadian provincial, and Australian state and territorial, governments have made to correctional programming and services, to progress reconciliation efforts in both countries. Additionally, the TRC (2015) and ALRC (2017b) reports underline the importance of collaboration with Indigenous leaders and communities to better meet the unique needs of the Indigenous population. The need for collaboration is supported by academic literature, which acknowledges the invaluable knowledge and information that Indigenous elders and community members hold (Lavallée, 2009; Snow, Hays, Caliwagan, Ford Jr, Mariotti, Mwendwa, & Scott, 2016).

The onus is on the governments of Canada and Australia to reconcile relationships with the Indigenous populations and reduce the levels of overrepresentation within the criminal justice systems. The governments of Canada and Australia committed cultural genocides (Krieken, 1999; TRC, 2015) and inflicted intergenerational trauma on the Indigenous populations within their countries (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia), 1997; TRC, 2015). Additionally, the implementation of a criminal justice system based on

Western values, and the rejection of Indigenous law has contributed to the high levels of Indigenous overrepresentation within the criminal justice systems, and the correctional systems more specifically (Cunneen, 2014). Johnson (2019) argued that "To say that law and justice have failed Indigenous Peoples in Canada is a vast understatement. Law and justice appear to be the tools employed to continue the forced subjugation of an entire population" (p. 14). The over-incarceration rates of Indigenous people continue to devastate Indigenous communities. Prison culture has replaced the traditional culture of Indigenous communities to the extent that some Indigenous youth do not have the opportunity to learn their traditional culture. It has also increased violence in Indigenous communities and increased feelings of hopelessness (Johnson, 2019).

As the Indigenous and European settler populations have different lifestyles and cultural norms, it is not surprising that the two populations would also have differing approaches to criminal justice. The TRC (2015) and ALRC (2017b) reports explained that when settlers colonized what are now Canada and Australia, common law became the law of the lands. Within a Western criminal justice system, crime and criminal behaviour are viewed as actions which warrant punishment, in part to deter the offender from committing crime in the future and deterring other individuals from committing similar act. From an Indigenous perspective, crime is seen as wrong behavior that can be corrected, or an illness that can be healed. Indigenous approach to criminal justice also places a much greater focus on improving the future of the individual who committed the crime (Ross, 2006). Johnson (2019) supports this claim, explaining that when it comes to criminal behaviour Western culture focuses on deterrence, while Indigenous culture focuses on redemption.

Ross (2006) discusses the cultural differences that have existed between the culture of the Indigenous population and that of the European settlers since the beginning of colonization in Canada. He also discusses the implications that a lack of awareness and understanding of cultural differences may have for the Indigenous peoples. Ross (2006) states that individuals gather their understanding and make assumptions based on their own cultural lens and perspectives. Further, based on the culture to which individuals have grown accustomed, certain actions and reactions will be expected. Johnson (2019), in writing on his experience as Cree man attending law school and later working as a prosecutor in Canada, explained that law was a hard concept for him to grasp through his own cultural lens as an Indigenous man. Once he began trying to understand the law and legal concepts from the perspective of a white man, he found them much easier to understand. However, it is not just the Indigenous population that struggle to understand the Western culture and criminal justice system, the lack of understanding goes both ways as Ross (2006) explained when discussing Indigenous rules and ethics.

The rules and ethics that were discussed by Ross (2006) are central to traditional Indigenous culture, and influence how Indigenous populations continue to approach and respond to conflict. Ross (2006) referred to “the ethic of non-interference” (p. 13), “the ethic that anger must not be shown” (p. 32), “the ethic respecting praise and gratitude” (p. 40), “the conservation-withdrawal tactic” (p. 41), and “the notion that the time must be right” (p. 44). Stemming from traditional survival tactics, Indigenous peoples in Canada will typically not interfere with the rights or livelihood of another individual, will not outwardly express anger, have expectations of effort and excellence, will not react hastily

on impulse, but rather consider all available options before proceeding, and will not act when unprepared or when they feel that the time is not right (Ross, 2006).

The failure to acknowledge and understand these rules and ethics may increase tensions between the Indigenous populations and the criminal justice systems. The system and its actors frequently act in opposition of these rules and ethics when fulfilling their roles and administering what Western culture views as justice, which Ross (2006) states the Indigenous population sees as arrogant and wrong. The failure to understand them may also lead Indigenous people involved in the justice system to be perceived as passive, unresponsive, or indifferent. Ross (2006) explains that a common response of Indigenous prisoners when admitted to custody is to practice the conservation-withdrawal tactic, while it is more common for non-Indigenous prisoners to act out in an attempt to assert dominance. Further, he warns that assessing behaviour through a non-Indigenous cultural lens can lead to misdiagnoses as well as the dismissal of problematic behaviour, such as the conclusion that an Indigenous offender cannot be healed if they do not comply with Western approaches. Ross (2006) succinctly states, "Until we realize that Native people have a highly developed, formal, but radically different set of cultural imperatives, we are likely to continue misinterpreting their acts, misperceiving the real problems they face and imposing, through government policies, potentially harmful 'remedies'" (p. 49). This quote underlines the importance of involving Indigenous peoples in both the development and the delivery of correctional programs and services, as recommended by the TRC (2015) and the ALRC (2017b). Collaboration with Indigenous peoples would not only offer a greater understanding to non-Indigenous

individuals, but would ensure that Indigenous prisoners are being accurately assessed, understood, and treated through programs and services.

Inconsistencies also exist when addressing crime and criminal justice in Indigenous communities, when compared to predominantly non-Indigenous jurisdictions. While working as a former prosecutor who travelled amongst remote communities in northern Ontario, Ross (2006) recalled that 10 percent of an Indigenous community stood trial on one single day in 1986. He argued that if 10 percent of the population of the city of Toronto or Ottawa were required appear in criminal court in one day, it would be viewed as a "social emergency" that must be resolved, and asserts that "northern reserves are no less deserving of our efforts and our concern" (Ross, 2006, p. 114).

Both the TRC (2015) and ALRC (2017b) final reports identified the lack of involvement of, and collaboration with, Indigenous Elders and communities in the criminal justice process and decisions. However, this is not due to a lack of desire on the behalf of Indigenous Elders. Ross (2006) explained that the former Chief of the Sandy Lake Reserve in Northern Ontario presented a proposal that sought to "marry" (p.190) the Indigenous and Western justice systems. The proposal also requested that Indigenous voices be incorporated within the Canadian justice system, and that community-selected Elders be able to participate in the sentencing process of Indigenous offenders (Ross, 2006).

The input and contributions of Indigenous Elders and communities are necessary in order to facilitate the healing that Indigenous peoples seek and require. The TRC (2015) explained that Indigenous cultural ceremonies were prohibited during colonization, in an attempt to break Indigenous cultural ties and further assimilation

efforts. Ross (2006) argued that by outlawing Indigenous cultural practices and ceremonies, settlers, whether intentionally or unintentionally, took away the traditional healing methods of the Indigenous population and their ability to heal themselves. The TRC (2015) identified that “studies based on interviews with Aboriginal inmates have confirmed that Aboriginal culture and spirituality can contribute to the healing of the inmates, to increased self-esteem, and to positive changes in lifestyle that make release and reintegration a real possibility” (p. 176). Government partnerships with Indigenous peoples to develop and deliver culturally responsive programs may have the ability improve the wellbeing of Indigenous prisoners and decrease reoffending rates through traditional Indigenous ceremonies.

Analyzing the effectiveness of the Gladue principles may provide valuable insight to the field of corrections, as similar barriers can potentially arise when implementing programs and services for Indigenous prisoners. The Gladue principles were intended to reduce the incarceration rates of Indigenous offenders by having judges consider their Indigenous identity and history when imposing a sentence. A lack of sufficient funding and resources (Edwards, 2017), combined with a lack of knowledge of appropriate alternatives to incarceration for Indigenous offenders (Rudin, 2008), have hindered the ability for the principles to achieve their intended outcomes. In order for correctional programs and services to be effective in promoting the healing of Indigenous prisoners and reducing the level of over-incarceration, proper funding, services, and education are necessary. The government and its agencies must be willing to partner with Indigenous communities and provide sufficient funding, correctional staff should be aware of the programs and services, their intent, and their effectiveness, and Indigenous prisoners

should also be made aware of the programs and services, and their ability to access them. The failure to provide adequate funds, services and education when developing, implementing, and delivering programs and services may produce outcomes similar to those of the Gladue principles – a lack of system-wide knowledge and understanding, and the failure to reduce the rate of overrepresentation of Indigenous prisoners in custody.

Numerous possible reasons exist for the differences and disparities amongst the responses of each province, state, and territory. One factor that may have a significant influence on the response of a government is the political party in power. Political parties that view Indigenous relations and policy as priorities would likely be more willing to enact changes in line with the calls to action of the TRC (2015) or the recommendations of the ALRC (2017b). In Saskatchewan, the Saskatchewan Party held a majority government in the province in both the term that the TRC (2015) report was released and the following term (Giles, 2016). This would suggest that political parties on opposing sides do not equally prioritize Indigenous relations and peoples. Further, in the 2016 Election Platform of the Saskatchewan party (Saskatchewan Party, 2016), the party boasted about improvements in employment outcomes and education achievements of Indigenous peoples. The platform did not mention the TRC (2015) report or the overrepresentation of Indigenous peoples in their provincial correctional system, despite having the highest rates of overrepresentation in custody in Canada.

The party on the left side of the Canadian political spectrum, in this case the NDP, has displayed their accountability and commitment to reconciliation in the years since the TRC (2015) report was released. Manitoba was governed by the New Democratic Party (NDP) when the TRC (2015) final report was published. The Conservative Party was

elected in the province's 2016 election, and again in 2019 (Elections Manitoba, n.d.). As the *Path to Reconciliation Act* was enacted by the NDP, and requires annual progress reports, it is unclear whether the conservative government maintains the same level of commitment, or is simply following the enacted legislation. The Manitoba Progressive Conservative platform for the 2019 provincial election (Progressive Conservative, 2019) stated that the party would work to increase Indigenous involvement in every sector, and "invest in Indigenous led healing services" to support "children and youth with complex needs" (p. 15). While the platform did not mention the TRC (2015) report or Indigenous involvement in the justice system, the implementation of the *Path to Reconciliation Act* may display both the importance and value of enacting change through legislation. Regardless of the party in power, the provincial government in power is legally bound by the *Act*, and has continued to fulfil its obligation to produce annual reports on process made in responding to the TRC's (2015) calls to action.

In Western Australia, the Western Australia Labor Party was elected in 2017 and remains in power (Western Australia Electoral Commission, 2017). The Western Australia Labor Party acknowledged the issue of Indigenous overrepresentation in the criminal justice system in both their 2017 and 2019 platforms. The 2017 platform acknowledges the issue of overrepresentation in the justice system, and specifically custody, and states that the party will collaborate with Indigenous communities to "develop laws, policies and practices to alleviate disadvantage and address the disproportionate numbers of Aboriginal people caught up in the criminal justice system" (WA Labor, 2017, p. 139). The 2019 platform of the Western Australian Labor Party stated that the party sees reconciliation with the Aboriginal population as a priority, will

adequately fund Aboriginal legal services, will commit to implementing each recommendation of the 1991 Royal Commission into Aboriginal Deaths in Custody, and will address the overrepresentation of First Nations peoples in custody and underrepresentation in diversion and victim support programs (WA Labor, 2019).

The Northern Territory branch of the Labor Party was elected in the Northern Territory general election in 2016 and continues to govern the territory (Australian Broadcasting Corporation, 2016). A comparison of the commitment of political parties cannot be conducted between Northern Territory and Western Australia, as the Labor Party has governed both the territory and the state since the release of the ALRC (2017b) final report. However, being a centre-left party, these actions taken, and the commitment to reconciliation displayed, by both regions would support the notion that parties on the left side of the political spectrum see reconciliation efforts as more of a priority.

Another potential reason for differences in responses is the representation of Indigenous peoples within the government. Indigenous individuals who work within the government, especially those who have influential roles in legislation and policy, may possess both the motivation and power to push for positive changes. The presence of Indigenous individuals within the government may also have indirect impacts on change. Non-Indigenous government staff with Indigenous coworkers may also feel an increased sense of motivation or responsibility to implement change, based on their proximity and professional relationships with Indigenous individuals. Marks (2015), on behalf of the Canadian Broadcasting Corporation, published an article in the same year that the TRC (2015) final report was released, stating that the representation of Indigenous peoples in politics in the province of Manitoba was higher than any year previous. Notably, the

leader of the Manitoba NDP, Wab Kinew, is Indigenous and the son of a residential survivor (Lambert, 2019). In 2017, there were six current Indigenous state parliamentarians in the Northern Territory, and two in Western Australia (Gobbett, 2017). No data could be found on the representation of Indigenous peoples in politics in Saskatchewan, which may further support the theory that Indigenous representation in government and legislature may encourage reconciliation efforts.

The relationships that the provincial and territorial governments had with Indigenous communities prior to the release of the national reports also have the ability to play an influential role in change. Provinces and territories that had closer, and more positive relationships with the Indigenous population and its communities would likely be more motivated to implement progressive changes. Additionally, these changes would be easier to implement, as the necessary relationships and partnerships may have already been established; or be much easier to establish when compared to building new relationships from the ground up. Previously established relationships may also allow for changes to be implemented faster. Where a respectful relationship already exists, the government and Indigenous population would likely collaborate more readily.

The absence of positive and respectful relationships would likely have the opposite effect, where changes would not be implemented as quickly or as willingly. Evidence would support this theory in the province of Saskatchewan, where there has been little acknowledgement of the TRC (2015) report or its calls to action found in the data included in this thesis. After announcing his retirement, former leader of the Saskatchewan Party Brad Wall was criticised for his lack of responsivity to Indigenous issues during decade as party leader (Warick, 2017). Members of the Indigenous

population including Real Carriere, a professor at the University of Saskatchewan, argued that Brad Wall took little action on Indigenous issues, including the employment and pay disparities, even after the release of the TRC (2015) report. Wall himself stated that while some progress was made, it was not enough to be satisfied with and that more work was required (Warick, 2017). Carriere also reported little hope for change in the future, as he stated that the candidates who sought to replace Wall showed little intent to address Indigenous issues (Warick, 2017). This finding would further support the suggestion that political parties that fall on the right wing have historically not been as responsive to the needs of Indigenous peoples and communities, or committed to reconciling relationships. In order to successfully respond to the calls to action of the TRC (2015), or the recommendations of the ALRC (2017b), the governments must be committed to establishing positive, working relationships with the Indigenous populations.

Finally, the influence and pressure of the public may have an impact on the actions of the government. The power of the collective population of a province or territory has the potential to establish the priorities of its government. From this perspective, in provinces or territories where there exist more desire and social pressure to implement change to improve the livelihood of the Indigenous population, the government may feel a greater responsibility to do so. Protests and pressure for change from the public remain ongoing, displaying a persistent desire for reconciliation efforts and change. In June of 2020, protests took place across the world calling for an end to racial injustices within the criminal justice system. These protests began in the United States as a response to the murders of Black men and women; however, protests also began in both Western Australia and Northern Territory in solidarity. The protestors

gathered in solidarity with the Black community in the United States, while also acknowledging the injustices experienced by their own Indigenous population within the Australian criminal justice system (AFP News Agency, 2020). The public pressure faced by the state and territorial governments in Australia may play a role in their commitment to reconciliation, given the actions that have been taken by both governments to advance reconciliatory efforts.

On the contrary, a lack of government action does not necessarily equate to a lack of public pressure. A protest of hundreds occurred at the Saskatchewan Legislature on National Indigenous Peoples Day in June of 2020, calling for the acknowledgement of Indigenous histories, and the reconciliation of relationships moving forward (Giesbrecht, 2020). Protests in Saskatchewan have also called for the removal of a statue of Sir John A. MacDonald, the first Prime Minister of Canada who oversaw the implementation of the IRS system, located in Saskatchewan (Eneas, 2020). Other prominent social issues have displayed the divide that continues to exist between the Indigenous and non-Indigenous populations in Saskatchewan. The acquittal of Gerald Stanley, who was charged with second-degree murder after shooting and killing Colten Boushie, a twenty-two year old Cree man, sparked mixed reactions across the province (Cuthand, 2019). Cuthand (2019) reported that one of his friends was in a bar when the not guilty verdict was announced to the crowd, which received cheers from the non-Indigenous population and prompted Indigenous patrons to leave.

It is important to acknowledge that the changes and improvements that were analyzed in this study play a small, albeit important, role in comparison to the magnitude of the issue of Indigenous overrepresentation in the criminal justice system. While

changes and improvements to programs and services for Indigenous prisoners in correctional facilities have the ability to aid in their healing process and lower rates of recidivism, they cannot prevent initial contact with the criminal justice system. In order to reduce overrepresentation in the criminal justice system as a whole, and within corrections, systemic changes must be made at each stage of the system. These changes should aim to reduce Indigenous contact with the justice system and to amend the justice system to be more responsive to the unique needs and circumstances of Indigenous offenders. As the system currently operates, Indigenous offenders in both Canada and Australia are over-policed (ALSWA, 2015; Rudin, 2005), more likely to be denied bail (ALRC, 2017b; ALSWA, 2015; Rudin, 2005), to be sentenced to a period of incarceration (Anthony, 2010; Rudin, 2005), less likely to be released on parole (ALRC, 2017b; OCI, 2012) and more likely to reoffend upon release (CSC, 2019a; Jones, Hua, Donnelly, McHutchison, & Heggie, 2006; OCI, 2012), when compared to non-Indigenous offenders.

The central limitation of this study, as previously mentioned in this thesis, is the reliance solely on publicly available, secondary data. The study analyzed data that had been published to the provincial and territorial government websites in the years since the TRC (2015) and ALRC (2017b) reports had been released. This limitation has two implications, the first being that any changes implemented by the government that were not published to its website were not included, and the second being that any changes made at the institutional level were not considered. There is also a potential that third parties may have conducted inquiries, established agreements, or developed programs

that did not meet the criteria of this thesis. Finally, any changes that were made at the federal level in Canada were not included in the analysis.

Another limitation of this thesis is that it conducts a comparison of two reports that were published approximately two years apart. The TRC (2015) final report was published in 2015, while the ALRC (2017b) was published two years later in 2017. Therefore, the Canadian provincial governments have had an additional two years to respond to the national report than the territorial governments of Australia have had to response to the national inquiry. Based on the results of this study, this limitation did not appear to negatively impact the results. The government of both Australian territories that were analyzed in this thesis had implemented notable changes to Indigenous correctional programming in the three years that have passed since the ALRC (2017b) report was released; while the government of one of the Canadian provinces has not published data in the five years since the release of the TRC (2015) report was released.

Future research on the overrepresentation of Indigenous peoples in the criminal justice system, in both Canada and Australia, can be taken in many different directions. On the same topic of prison programming, future research may analyze data that was not published on the government websites, including the work of third parties or work done at the institutional level. A broader study may look at the changes that have been implemented in response to calls to action thirty and thirty-six (TRC, 2015) across every Canadian province and territory, and recommendations 9-1 and 16-1 (ALRC, 2017b) across all Australian territories, for comparison. Within Canada, federal government initiatives that have been developed and implemented in response to the TRC (2015) can also be analyzed.

The TRC (2015) call to action and ALRC (2017b) recommendation addressing correctional programming was just one of numerous calls for change within the larger criminal justice system. Future studies that seek to analyze or compare responses to the TRC report (2015) and/or the ALRC (2017b) report should focus on other calls to action or recommendations that fall under the 'justice' heading. These studies may aim to determine how the governments of each country, and their respective provinces and territories, have made changes to policing, court proceedings, sentencing, parole, probation, and community corrections following the release of the national reports.

Additionally, future research should seek to evaluate the effectiveness of the changes that have been implemented within the correctional system, and the criminal justice system more broadly. When looking at provinces and territories individually, those that have implemented changes within their system should see a reduction in the level of Indigenous overrepresentation. When comparing across provinces and territories, those that have developed more thorough and effective responses should see larger reductions in levels of overrepresentation, compared to provinces and territories that have implemented less thorough responses, and those that have no responded.

Finally, changes to the youth criminal justice system since the release of the TRC (2015) and ALRC (2017b) reports should be analyzed. The TRC (2015) acknowledged that "the youth justice system, perhaps even more than the adult criminal justice system, is failing Aboriginal families" (p. 177), citing high levels of overrepresentation of Indigenous youth in custody. The ALRC (2017b) also reported high levels of overrepresentation of Indigenous youth in Australian detention centres; citing research that found that while overall youth custody rates declined between 2010-11 and 2015-

2016, the level of Indigenous youth overrepresentation continued to rise. The ALRC (2017b) also reported that "juvenile detention is a key driver of adult incarceration" (p. 486), underlining the importance of reducing the levels of incarceration of youth, and specifically Indigenous youth. Therefore, future work should seek to analyze and evaluate the changes that have been implemented within the youth justice system.

The current state of overrepresentation of Indigenous offenders within the criminal justice system has been described as "a crisis within the justice system" (R v Gladue, 1999, para. 64) in Canada, and a "national tragedy" (ALRC, 2017b, p. 37) in Australia. The TRC's (2015) calls to action and the ALRC's (2017b) recommendations identify numerous changes that should be made in order to reduce Indigenous overrepresentation in the Canadian and Australian justice systems. In the years since the national reports were released, the governments of both Canada and Australia have been criticised for their lack of action to respond to the calls to action and recommendations, and to respond to the issues that were acknowledged. The Canadian Broadcasting Corporation undertook a project they called Beyond 94, which aimed to track the progress of the government in responding to each of the ninety-four calls to action from the TRC (2015). As of August 2020, almost five years since the release of the final report, the government has completed ten calls to action, while sixty are in progress, and twenty-four remain to be addressed (CBC News, 2020). Lee (2020) argued that since the release of the ALRC (2017b) report, the federal government of Australia has failed to adequately acknowledge the report and follow its recommendations. Of the thirty-five recommendations to reduce over-incarceration that were included in the ALRC's (2017b)

report, the government has partially implemented just one in more than two years (Lee, 2020).

Efforts to improve the access to, and quality of, services and programming that are available to Indigenous prisoners that address offending behaviours and heal past traumas was a priority identified by both national reports. It is imperative to acknowledge the colonial histories and reduce the overrepresentation of Indigenous peoples in the criminal justice system to improve the livelihood and overall wellbeing of the Indigenous population in both Canada and Australia. In order to do so, respectful and collaborative partnerships must be established with the Indigenous populations, as Johnson (2019) states, “you are never going to find solutions if you continue to have conversations about us without us” (p. 146).

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