Indigenous Battered Women Who Kill: A Qualitative Thematic Analysis

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Abstract

This thesis explores the topic of Canadian-Indigenous battered women who killed their intimate abusers and seeks to better understand these women's experiences, their treatment within the Canadian criminal justice system, and how BWS was used in their cases. A theoretical framework comprised of Indigenous Feminisms and Intersectionality was used to guide this research study and to shed light on the lived experiences of Indigenous battered women who killed their abusers. Various important Indigenous Feminist theorists such as Dian Million (2013) and Patricia Monture-Angus (1998) were drawn upon as well as advocates for Intersectionality such as Patricia Hill-Collins (2019). A qualitative thematic analysis was performed to create four overarching themes from eight cases where Indigenous battered women killed their intimate abusers.

Keywords: Indigenous battered women, Battered Women's Syndrome (BWS), battered women who kill, domestic violence, qualitative thematic analysis

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"They are Indian women versus a white patriarchal state, a state that first destroyed, then substituted itself for their family, which then sits in paternal judgement of their morals"

(Million, 2013, pp. 63-64).

Introduction

1.1 Research Context

In Canada, Indigenous peoples report more instances of violent victimization than do non-Indigenous women, which can be traced back to colonization when white settlers stole Indigenous people's lands and worked violently to assimilate Indigenous cultures (StatsCan, 2017, p. 1, Million, 2013, p. 5). Through colonial practices like residential schools, the sixties scoop, and ongoing systemic discrimination, Indigenous peoples suffer intergenerational trauma that has manifested in higher rates of substance abuse, mental illness, homelessness, suicide, and domestic violence (Million, 2013, p. 5) As such, Indigenous women are at a high risk of becoming victims of domestic violence, which can sometimes lead to intimate partner homicide. In order to survive, Indigenous battered women sometimes kill their intimate abusers and are punished by the criminal justice system.

The relationship between Indigenous peoples and the Canadian criminal justice system has been a violent one; Indigenous peoples have historically faced cultural assimilation through state-induced violence (Monchalin, 2017, p. 71). Colonialism continues to affect Indigenous peoples in negative ways that leave them vulnerable to encounters with the criminal justice system. Indigenous peoples are more likely than non-Indigenous peoples to be incarcerated in Canada (Papalia, Shepherd, Spivak, Luebbers, Shea, & Fullam, 2019, p. 1067). According to Statistics Canada, from 2017 to 2018 Indigenous peoples accounted for approximately 4.1 percent of the

Canadian population, however, 40 percent of federally incarcerated women were Indigenous (Clarke, 2019, p. 2). Incarcerated Indigenous women are more likely than not to have previously suffered sexual and/or familial violence and to struggle with substance abuse, which can oftentimes play a role in their paths to criminalization (StatsCan1, 2019, p.1). Indigenous battered women are at a higher risk of encountering police than are non-Indigenous battered women because of the historic and continuing over-policing and the strict surveillance of Indigenous peoples and their communities (Nettelbeck & Smandych, 2010, p. 370). Thus, Indigenous peoples are revictimized by the state, as they are frequently punished by the criminal justice system for attempting to survive in the state-induced colonial conditions that have been enforced upon them since first contact (Million, 2013, p. 40).

It is important to note that despite numerous attempts by the Canadian state to assimilate Indigenous cultures, Indigenous peoples have remained strong, resilient, and proud of their diverse cultures. Many studies show that practicing Indigenous cultural customs and traditions act as protective factors for Indigenous peoples and strengthen their resilience (Chua, Kadirvelu, Yasin, Choudhry & Park, 2019, p. 1766). For instance, a multitude of Indigenous native languages, spiritual beliefs, and Indigenous art forms are prominent within Indigenous communities, which demonstrates the unwavering power of Indigenous peoples' will to guard their cultural traditions despite generations of colonial violence and ongoing systemic discrimination within Canadian institutions. Moreover, certain Indigenous legal practices that are based on restorative justice, such as sentencing circles that promote healing, have been integrated into the mainstream criminal justice system (Goldbach, 2015, p. 72). In this way, Indigenous cultural traditions, customs, and practices remain present despite the ongoing hardships for Indigenous peoples and their communities in Canada.

When Indigenous battered women kill their intimate abusers (including boyfriends, common law partners, or husbands) Battered Women's Syndrome (BWS) is often used as an explanation for their actions in court (Fine, 2013, p. 226). BWS is a subcategory of Post-Traumatic Stress Disorder (PSTD), which includes symptoms such as chronic stress, fear, and difficulty sleeping (Millen, Kennedy, Black, Detullio & Walker, 2019, p. 852). BWS explains that battered women experience unique realities that alter their abilities to make rational decisions due to the victimization they experience at the hands of their intimate partners (Fine, 2013, p. 223). Moreover, the concept 'learned helplessness' is often associated with BWS, which refers to how some battered women eventually normalize domestic violence and come to accept abuse as a constant in their lives (Walker, 2006, p.149). While BWS was created to better explain the mindsets of battered women, it cannot be used as a basis for acquittal for battered women who kill their abusers (Wells, 2010, p. 356). Instead, BWS, if argued successfully, can help lessen the charge from first- or second-degree murder to manslaughter (Wells, 2010, p. 356). BWS has been heavily critiqued over the past twenty-one years by many feminist scholars. According to Sheehy (2014), most Canadian battered women who kill their abusers plea guilty and they are ultimately sentenced to prison for an average of two years less a day despite their history of victimization (p. 189). Furthermore, Indigenous battered women who kill their intimate abusers are more likely to receive longer prison sentences than non-Indigenous battered women who kill, and Indigenous battered women are more likely to be found guilty at trial than non-Indigenous battered women who kill their abusers (Sheehy, 2014, p. 189 & 193). Additionally, critics argue that BWS resists an intersectional analysis since BWS fails to recognize differences in race, culture, socio-economic status, sexuality, and ability (Rothenberg, 2003, p. 782). In this way, BWS may not be an adequate explanation for Indigenous battered women who kill their abusers because Indigeneity is not

acknowledged. As well, BWS is arguably riddled in patriarchal stereotypes and sexist undertones that maintain the subordination of women and reinforce male dominance (Plumm & Terrance, 2009, p. 188).

1.2 Purpose of Research Study

This research study examines cases where Indigenous battered women killed their intimate abusers and analyzes how unique aspects associated with Indigeneity are approached by the Canadian criminal justice system, its actors, and how BWS was utilized in each unique case. A qualitative thematic analysis of eight cases where Indigenous battered women killed their abusers was performed by examining court transcripts from trials, sentence hearings, and reasons for sentences, as well as other documents from QuickLaw. The snowball method was utilized to acquire all eight cases.

This research study uses a feminist theoretical framework consisting of both Indigenous Feminisms and Intersectionality. On one hand, Indigenous Feminisms emphasize not only the problems that exist for Indigenous women regarding gender inequality, but also the colonial and racist issues that marginalize and exclude Indigenous peoples from social, political, legal, and medical institutions (Dulfano, 2015, 37). Suzack (2015) describes Indigenous Feminisms as a grouping of theories that show "how systemic forms of oppression, such as law, adversely affect Indigenous women, and illustrate how gender identity represents the source of wide-spread incidences of violence against Indigenous women through cultural practices that amplify women's social, political, and cultural disempowerment" (p. 261). Thus, Indigenous Feminisms examine the structural and individual sources of oppression that effect the lived experiences of Indigenous peoples. On the other hand, Intersectionality is used to better understand how interlocking factors of oppression such as race, gender, and class, form unique experiences for marginalized groups

like Indigenous peoples (Nash, 2011, p. 447). An intersectional lens helps to form deeper understandings of structural issues that effect vulnerable groups so that action can be taken, and policies can be created to improve their well-being (Phoenix, 2006, p. 189).

The following are important terms to define for this particular research study. First, 'domestic violence' refers to any verbal, psychological, physical, and/or sexual abuse between intimate partners (Lockton, 2016, p. 7). Second, 'intimate partners' is defined as two people who are involved in a romantic relationship with each other. Third, a 'battered woman' is a woman who has experienced or continues to experience domestic violence. Fourth, 'Indigenous' is an umbrella term that encompasses Mėtis, First Nations, and Inuit peoples (StatsCan2, 2021, p. 1).

The following is a disclaimer from the researcher. The researcher acknowledges that she is not from an Indigenous background and that she possesses white privilege. As such, she does not attempt to speak for Indigenous peoples or communities but rather seeks to better understand the experiences of Indigenous battered women who killed their abusers and how they are treated by criminal justice actors such as police, judges, and Crown prosecutors, as well as how BWS protects or fails to protect these women. Initially, I was going to study battered women who kill, however, after much research, there appeared to be a gap in literature pertaining to *Indigenous* battered women who killed their abusers and how they fare within the Canadian criminal justice system. In this way, I thought it important to examine how the differences of Indigeneity (versus non-Indigeneity) may affect the experiences of Indigenous battered women. Since Indigenous peoples are a marginalized group in Canada, I recognize my responsibility to not, in any way, exploit Indigenous peoples for the benefit of producing research and I therefore employed and exercised 'reflexivity' throughout my research study. Hesse-Biber (2011) describes 'reflexivity' as

frequently checking one's position of privilege to safeguard against wielding too much power as a researcher (p.190).

1.3 Research Questions and Structure

This research aims to better understand the lived experiences of Indigenous battered women who killed their intimate abusers, how unique aspects associated with Indigeneity are interpreted and considered by actors in the Canadian criminal justice system in these cases, and how BWS is used as a defense strategy for Indigenous battered women who killed their abusers. The research questions are as follows:

1. How has colonial intergenerational trauma affected the lived experiences of Canadian-Indigenous battered women who killed their intimate abusers?
2. What unique socio-cultural differences associated with Indigeneity exist among Canadian-Indigenous battered women who killed their intimate abusers?
3. What legal differences associated with Indigeneity exist among Canadian-Indigenous battered women who killed their intimate abusers?
4. Do criminal justice actors use BWS to devalue the experiences of Canadian-Indigenous battered women who killed their intimate abusers? If so, how?

This thesis contains six chapters. The first chapter is the introduction to the research topic and research study. The second chapter encompasses the literature review, which includes problematizations of Canada's treatment of Indigenous peoples, the Canadian criminal justice system, and of BWS. The third chapter contains the theoretical framework that consists of both Indigenous Feminisms and Intersectionality. The fourth chapter is the methodology, which describes the methods used to gather and analyze the data. The fifth chapter presents the analysis

which is structured according to the four overarching themes. Finally, the sixth chapter is the conclusion, which identifies the researcher's interest in the topic, explores the significance of the study, examines what this research means, and offers possible solutions and ideas for future research.

Chapter 2: Literature Review

2.1 Introduction

This literature review examines the following two main domains of literature. First, the literature pertaining to the history of colonization in Canada is problematized as colonial and literature concerning the *Indian Act*, residential schools, and the sixties scoop is critically discussed as expressions of settler-colonialism. Next, literature that discusses the Canadian criminal justice system as a colonial structure is critically examined. Finally, the implementation of Indigenous-related 'initiatives' into the Canadian criminal justice system is examined as ineffectual within a colonial institution.

Second, a critical review of the literature regarding 'Battered Women's Syndrome' (BWS) is examined. BWS is problematized as a legal issue, a medical issue, a heterosexist issue, a patriarchal issue, and a racial issue.

PART ONE: Canada's Colonial Past and the Criminal Justice System as an Extension of Colonialism

2.2 Indigenous-Canadian Literature: Problematizing 'White Settler' (Mainstream) History as Colonial

Canadian historians often depict colonization as a necessary, single event orchestrated by heroic white settlers; however, this mainstream account of past events reinforces a colonial perspective that silences Indigenous peoples (Smith, 2008, p. 311). Canada is a 'settler-nation', meaning that it was stolen from Indigenous peoples in a violent manner, which forced Indigenous peoples to adopt white practices and norms or risk exclusion or extermination (Hunt, 2016, p. 1). Hunt (2016) explains how mainstream archives that tell the story of colonization often exclude Indigenous peoples, "Settlement, in the archives, is often presented as something that is already coming into being, just as Indigenous peoples are often presented as always already disappearing"

(p. 5). In this way, colonization is often justified as inevitable while also diminishing the pre-existing presence of Indigenous peoples in order to naturalize the violent assimilation of Indigenous cultures and their forced submission. Furthermore, 'frontier myths' are what Elizabeth Furniss (1999) refers to as cultural myths derived from mainstream history that have morphed into common prejudices and stereotypes of Indigenous peoples, and therefore help to maintain the status quo power dynamic between 'white people and Indians' (p. 198). For instance, oftentimes in white settler accounts of history, Indigenous peoples are illustrated (if at all) as simple savages that needed to be restrained and controlled by settlers. In this way, a strict dichotomy between white settlers and Indigenous peoples was solidified by painting the former as complex, powerful leaders, and the latter as an inferior and culturally subordinate group without true identities (Furniss, 1999, p. 198). Additionally, Indigenous women are often completely excluded from the mainstream narratives surrounding colonization, which demonstrates not only a racist foundation, but also a patriarchal undertone within Canadian history. When Indigenous women are acknowledged in 'white settler' accounts of history, they are often over-sexualized and regarded as one-dimensional objects (Million, 2013, p. 38). Million (2013) describes Indigenous women as an especially mistreated people who have experienced sexual violence through 'gendered heterosexual colonization', and who continue to suffer from gendered forms of violence that have been institutionalized into Canada's core (p. 38). Therefore, the subordination of Indigenous peoples, especially Indigenous women, is reinforced today through ongoing colonial narratives that first began centuries ago.

As aforementioned, according to Million (2013), Indigenous peoples have been historically left out of the mainstream history that is depicted in historical archives and textbooks, which has helped to maintain covert colonialism through the systematic exclusion of Indigeneity from

records of Canadian history; this has been done strategically so that there is less focus on past state-induced colonial violence (p. 69). Indigenous peoples have increasingly worked to voice their 'alternative' histories that ultimately challenge the 'settler truths', and white settler perspectives regarding colonization that dehumanize Indigeneity (Million, 2013, p. 67). The disruption of 'white-settler' versions of Canadian history is necessary so that the violent assimilation of Indigenous cultures, practices, and occupation of land is no longer viewed with banality, but with disgrace and disgust, as Canada's legacy is riddled with colonial violence that punished cultural diversity. Hunt (2016) warns us to avoid assuming that there is only one version of history from an Indigenous perspective, as Indigeneity encompasses an abundance of different cultures and argues that it is vital for Indigenous peoples to voice these diverse accounts,

> And while I must adamantly refuse that anyone come to call the specific story of my grandmother and grandparent's their own, it is necessary to recognize how this one story is emblematic of the larger narrative in Canada, a narrative wherein settlers become great 'pioneers', and Indigenous peoples ghosts (Hunt, 2016, p. 6).

The violent narratives that favour the actions of white settler's rest on the continuity of Indigenous silence and erasure, which positions Indigenous narratives as powerful entities that have the ability to expose colonial narratives.

2.3 Colonialism in Canada: The Indian Act

Contemporary Indigenous literature examines 'settler-colonialism', which refers to how colonization was not the only colonial event that has taken place against Indigenous peoples in Canada, as colonial violence is continual and ongoing through both state violence and discrimination against Indigenous peoples within various institutions (Smith, 2010, p. 45). Veracini (2010) explains settler-colonialism as, "A specific mode of domination where a community of exogenous settlers permanently displace to a new locale, eliminate or displace

Indigenous populations and sovereignty, and constitute an autonomous political body" (p. 1). As such, settlers take over Indigenous spaces and dismiss any kind of relationship with Indigenous peoples (Veracini, 2010, p. 2). Canada introduced the *Indian Act* in 1876, which has remained intact to this day despite its original goal of Indigenous cultural assimilation (Morden, 2016, p. 113). The *Indian Act* was created for the purpose of controlling First Nations peoples in all aspects of how they live their lives; for example, by limiting their political participation, deciding who is worthy of Indian status, and removing self-governing rights in order to 'westernize' them (Poucette, 2018, p. 502). Million (2013) argues that the *Indian Act* helped to institutionalize racism, sexism, and colonialism within Canada's legal sector by establishing a gendered and racialized hierarchy that excluded women and removed agency from racialized Indigenous peoples (p. 41). For example, to prevent Indigenous women from marrying non-Indigenous men, the *Indian Act* stated that all Indigenous women would lose their Indian membership and corresponding rights, such as rights regarding land and custody of children, if they married outside their own race and culture. This law reinforces a white supremacist, patriarchal perspective, as Indian women who were robbed of their memberships became more vulnerable to poverty, homelessness, and gendered violence (Kuokkaren, 2012, p. 234). Thus, the *Indian Act* reinforces heteropatriarchy and solidifies settler-colonialism in Canada. Despite these issues, the *Indian Act* is the only piece of legislation that is based on race in contemporary Canadian society.

Several changes have been made to the *Indian Act* over the years, however, these changes have been slow moving and oftentimes initiated by Indigenous women rather than the Canadian government. The gender discrimination within the *Indian Act* left Indigenous women with few rights and with a subordinate position within Canadian society. For instance, suffering from gender discrimination due to the *Indian Act*, a Maliseet Indian woman, Sandra Lovelace, brought her case,

Lovelace v. Canada, to the Supreme Court in 1977; the court ruled against her (Kuokkanen, 2012, p. 234). Lovelace had argued that because she had married a non-Indian man, lost her Indian status, and later divorced him, she was unable to purchase land on her home reserve, Tobique Reservation, which meant that her relationship with family and friends, and her ties to her cultural heritage were severed (Caselaw Database, 2021, p. 1). As well, Lovelace was denied hunting and fishing rights, access to money from the Band Council, and she was cut off from many Indigenous-related federal programs (Caselaw Database, 2021, p. 1). The United Nations Human Rights Committee (UNHRC) later heard Lovelace's case and agreed that the *Indian Act* violated Indigenous women's right to enjoy their cultures (Kuokkanen, 2012, p. 235). Thus, the UNHRC forced parliament to act, which shows that the Canadian government only (reluctantly) amended the *Indian Act* because the UNHRC demanded it was necessary (Kuokkanen, 2012, p. 234). Parliament passed BillC-31 to eliminate gender discrimination within the *Indian Act,* however, the bill failed to fix the underlying issues that were highlighted in *Lovelace v. Canada (*Kuokkanen, 2012, p. 235). Various other amendments have ensued over the years; however, the *Indian Act* institutionalized a white settler colonial perspective of Indigenous peoples that continues to affect them by way of 'internalized colonization' (Million, 2013, p. 48). 'Internalized colonization' is the shame that is attached the experience of being Indigenous,

> Shame was the felt experience that residential school survivors most often attached to the position of being 'Indian'. Shame is quintessentially 'embodied sociality', a primary self-reflective axis, a social/body relationship, in part a felt analysis, an assessment of your perceived status. Shame is part of 'self-attention', the recognition of 'what others think of us'. Shame is visceral interest (Million, 2013, p. 48).

Internalized colonization is felt by Indigenous peoples, and it is perpetuated through institutionalized racism. Therefore, through Canadian law, the *Indian Act* solidifies the racist,

sexist notions that Indigenous peoples, especially Indigenous women, are somehow 'less than' when compared to non-Indigenous Canadians.

It is important to touch on the fact that while the continual existence of the *Indian Act* reinforces institutionalized colonialism in Canada, it also regulates negotiations between the federal government and Indigenous communities, which can help produce change. There is currently a complex relationship between First Nation leaders who have been chosen to deal with government officials to organize and negotiate agreements for their communities (Mordern, 2016, p. 121). For example, Morden (2016) states that the federal government selects which Indigenous leaders they will communicate with to discuss and debate terms, which means that the Canadian government continues to hold power in the state's relationship with Indigenous peoples (p. 120). Moreover, the First Nations leaders who participate in meetings with government officials are also choosing to participate in a colonial system, and so Indigenous peoples are arguably forced to participate if incremental change is to ever occur (Morden, 2016, p. 121). Therefore, the *Indian Act* appears to be the only steppingstone between Indigenous leaders and the Canadian federal government, which means that it serves a purpose for negotiations, and it is likely the only possible avenue towards progressive change at this present time.

2.4 Colonialism in Canada: The Residential School Legacy

According to much Canadian literature, residential schools represented a culmination of colonial violence by the state against Indigenous peoples historically. Beginning in 1892, the Roman Catholic Church, later joined by the Canadian federal government, worked to assimilate Indigenous cultures by taking Indigenous children from their families and forcing them to attend residential schools where they were to submit to norms and practices rooted in white supremacy and Christianity (Elias, Mignone, Hall, Hong, Hart & Sareen, 2012, p. 1561, McKenzie, Varcoe,

Browne, & Day, 2016, p. 3). Within residential schools, Indigeneity was considered shameful, and so speaking one's traditional language, continuing cultural traditions or practices, including non-Christian spirituality, were punished severely (McKenzie et al., 2016, p. 3). In this way, residential schools were essentially 'total institutions' like prisons, as Indigenous children were forced to follow strict regimes and rules with complete compliance or risk violent sanctions (McKenzie et al., 2016, p. 5).

For Canada to justify the maltreatment and cultural assimilation of Indigenous children, the government masked state-induced violence with 'social welfare and morality', since Indigeneity was deemed to be a subordinate status through the reinforcement of racist, colonial stereotypes (Million, 2013, p. 41). Much Indigenous literature discusses the catastrophic consequences of residential schools due not only to violent cultural assimilation under prison like conditions, but also to the extreme physical, sexual, and emotional abuse of many Indigenous children at the hands of state and church officials (Million, 2013, p. 49). Years later, to make amends with Indigenous peoples, the Canadian government instituted the Truth and Reconciliation Commission in 2015, part of the Indian Residential School's Settlement Agreement, which encompassed a collection of archives and experiences from survivors of residential schools with the purpose of mending the relationship between Indigenous peoples and the Canadian government (Dowell, 2017, p. 120). However, some Indigenous scholars criticize the Truth and Reconciliation Commission as merely symbolic rather than effective in changing the colonial circumstances of Indigenous peoples in Canada because it exists as an emblematic statement but fails to change the circumstances for Indigenous communities that continue to suffer; Canada is deeply embedded in settler-colonialism (Million, 2013, p. 12, Hansen & Dim, 2019, p.2). For instance, Million (2013) asserts that while the Truth and Reconciliation Commission acknowledges systemic inequalities

resulting from colonial violence, it ignores the need for 'self-determination' and political rights that have been previously recommended by the Royal Commission on Aboriginal Peoples in 1966 (p. 12). 'Self-determination' refers to Indigenous peoples' right to decide what is best for them in all areas of life such as within social, political, and economic arenas (Million, 2013, p. 4). Million (2013) argues that the focus of the commission, being 'healing', is problematic because it not only implies that Indigenous peoples are a broken people, but for true healing to happen, it insinuates that colonial violence was an isolated event that occurred in the past during residential schools; this is not the case since the Canadian climate is shrouded in racism and settler-colonialism throughout its institutions (p. 8).

Furthermore, by promoting a need for Indigenous peoples to 'heal', this creates a foundation for the emphasis on 'damage-centred research'. Tuck (2009) describes 'damage-centred research' as research that depicts Indigenous peoples and communities as objects or bodies to study that have been encrypted within a 'pain narrative' (p. 412). As such, Indigenous peoples are often only spoken of in research settings in exploitive or pathologizing ways, which reflects the white supremacist perspective intimate that Indigeneity is forever damaged. Therefore, despite the Canadian government's 'effort' to promote 'healing' among the generations of Indigenous peoples who are suffering from the trauma of residential schools, Canada remains a settler-colonialist nation, and so the apology that is the Truth and Reconciliation Commission is arguably less effective than intended by the Canadian government.

2.5 Colonialism in Canada: The Sixties Scoop

The sixties scoop is a concrete example of violent colonialism on the part of the Canadian government, yet it is often overshadowed by residential schools within Canadian literature. The sixties scoop began in the 1960s and lasted approximately twenty years (McKenzie et al., 2016, p.

2). During this timeframe, thousands of Indigenous children from western Canadian provinces were, again, taken from their homes and away from their families where they were forced to live with white foster parents and many were adopted (McKenzie, 2016, p. 2). In many ways, the sixties scoop simply continued the colonial practices of residential schools because it again denied Indigenous peoples the right to self-determination since they lost their right to raise their own children as they saw fit. Many Indigenous children ages seven to fifteen who were victims of the scoop were sent to live with families who neglected and abused them (McKenzie, 2016, p. 6). The sixties scoop was justified by the Canadian government because so many Indigenous children were living in poverty and unhealthy conditions, whereby intervention by 'white saviours' was deemed necessary (McKenzie, 2016, p. 6). Although it was the state itself that had created these poor living conditions for Indigenous peoples through colonization, residential school trauma, and ongoing discrimination, the state blamed Indigenous peoples for their circumstances and took away their children. McKenzie (2016) explains how colonial violence has created troublesome living situations for Indigenous peoples writing that, "Past and present colonial violence directly contributes to the intersecting issues of poverty and unstable and unsafe housing, systemic discrimination, substance misuse, and other individual, familial, and community health concerns for Indigenous peoples" (p. 8). As such, Indigenous communities, struggling with the effects of past and ongoing colonial violence, continue to be punished for their state-induced circumstances. Similarly, Million (2013) states that Canada normalizes the violence done to Indigenous peoples in order to attempt to mask its long history of colonial violence, however, colonialism is still alive in contemporary Canadian society (p. 73). For example, today, multiple generations of Indigenous peoples experience intergenerational trauma from the colonial violence of residential schools, the sixties scoop, and systemic racism in the form of internalized colonization (Elias et al., 2012, p.

1561). There exists a cycle of trauma within Indigenous families that has resulted in high levels of mental illness, substance abuse, domestic violence, and suicide (Monture-Angus, 1998, p. 199). Indigenous scholars such as Million (2013) argue that Indigenous peoples continue to be punished by heteropatriarchal structures like the criminal justice system, for circumstances that the state created for them (p. 63). Therefore, within settler-colonialist Canada, there is a long history of violence against Indigenous peoples that began during colonization and continued by the enforcement of the *Indian Act*, residential schools, the sixties scoop, and ongoing colonial discrimination. Despite the various amendments to the *Indian Act* and (symbolic) apologies, the intergenerational trauma, lack of self-determination, and poor living conditions in which many Indigenous peoples live, their situation remains largely unchanged in the present-day colonial climate of Canada.

2.6 Problematizing the Criminal Justice System as a Colonial Structure

The criminal justice system as a Canadian institution is founded on colonialism, as it has historically punished Indigenous peoples for their cultures and practices. Andrea Smith (2013) asserts that structures and institutions must be dismantled in order to eliminate the colonial, racist, and sexist underpinnings that oppress marginalized groups (p. 278). Until these concrete institutions are taken apart and rebuilt, Indigenous peoples will continue to receive inadequate resources and face many barriers to care and protection that powerful groups, like white males, possess in abundance (Smith, 2013, p. 278). The Canadian criminal justice system, specifically, disproportionately targets racialized minorities, including Indigenous peoples, which leaves these groups vulnerable to intense surveillance and punishment (Million, 2013, p. 40). There are several issues that demonstrate how the criminal justice system is a colonial institution. The following issues will be examined: the missing and murdered Indigenous women and girls, the over-

representation of Indigenous women in the criminal justice system, including over-policing and in prisons, and the lack of success regarding Indigenous 'initiatives' within the criminal justice system.

2.7 Institutionalized Sexism and Colonialism: The Missing and Murdered Indigenous Women and Girls in Canada

The lack of criminal justice response for the countless missing and murdered Indigenous women and girls demonstrates the ongoing sexism and systemic discrimination of Indigeneity by criminal justice actors in Canada. For decades, Indigenous women have experienced significantly more violence than do non-Indigenous women in Canada, and yet, the criminal justice system refrained from intervening to protect Indigenous women from gendered, and oftentimes sexual, violence (Million, 2013, p. 33). Million (2013) explains that Canada has a colonial legacy of failing to protect Indigenous women from sexual and physical violence and continues to knowingly turn a blind eye towards ongoing gendered, racialized violence today (p. 33). Million (2013) refers to the countless missing and murdered Indigenous women and girls who have received little to no investigation from Canadian police because of structural issues like racism, sexism, and colonialism that decide who is considered worthy or deserving of protection. These problematic notions about which bodies deserve protection stems from colonization and the broken relationship between the Royal Canadian Mounted Police (RCMP) and Indigenous peoples (Hansen & Dim, 2019, p. 5). Hansen and Dim (2019) discuss the troublesome relationship that Indigenous peoples have with police, especially the RCMP, an organization that facilitated the forced removal of Indigenous children from their homes so they could attend residential schools (p. 4). As well, the RCMP charged Indigenous peoples if they left the reserve without a pass, and certain Saskatoon police officers engaged in 'starlight tours' (p. 4). 'Starlight tours' refer to instances where Saskatoon police officers, in the early 2000s, drove Indigenous peoples out of town and dropped

them off in remote locations without clothing so they would freeze (Hansen & Dim, 2019, p. 5). Three Indigenous men were confirmed dead due to this practice by police. In this way, these are just a few examples of how the police have historically participated in violent practices towards Indigenous peoples that are rooted in white supremacy and colonial discrimination.

Rachel Flower (2015) explains that Indigenous peoples have repeatedly been mistreated by Canadian police so much so that it appears normal, which is how patriarchal, colonial violence is maintained institutionally (p. 36). Flower (2015) asserts that the history of settler-colonialism within Canada is based on the 'disappearance' of Indigenous peoples from their land as if they had never inhabited it before the appearance of white settlers, and so they disappear from mainstream accounts of history (p. 42). As such, systemic violence can be seen in the form of a lack of criminal justice attention for missing and murdered Indigenous women and girls, which frames Indigeneity as an innate vulnerability to victimization to mask its colonial discrimination against Indigenous peoples, especially Indigenous women. Moreover, the criminal justice system and police often operate using racist and sexist stereotypes regarding Indigenous peoples to justify the miniscule amount of time and attention given to these marginalized groups (McKenzie et al., 2016, p. 9). For example, Indigenous men are often stereotyped as 'drunks' or 'criminals' as if their unique culture has made them biologically inferior or sub-human when compared to non-Indigenous men (Hansen & Dim, 2019, p. 5). As well, Indigenous women are frequently over-sexualized and deemed 'prostitutes' in both the media and within criminal justice investigations, which is problematic, as women who work in the sex trade have historically been considered undeserving of protection (Hansen & Dim, 2019, p. 5). Hansen and Dim (2019) state that colonization and corresponding stereotypes concerning Indigenous peoples naturalize how badly the criminal justice system and the media portray and treat Indigenous peoples,

> Colonization resulted in generations of Indigenous children forced into residential schools where they experienced abuse, imperialism, racism, and patriarchy. The effects of residential schools include addictions issues, low self-esteem, and male dominated communities. The present circumstances related to impoverished Indigenous communities in Canada contribute to violence and crime. The criminal justice system and the mainstream media treat Indigenous victims of crime as marginal, while at the same time, Indigenous peoples accused of criminal offences generally receive harsher sentences than mainstream offenders (Hansen & Dim, 2019, pp. 6-7).

Hence, the criminal justice system continues to ignore the victimization that Indigenous peoples experience, including missing and murdered women, while simultaneously severely punishing Indigenous peoples for crimes despite their state-induced colonial circumstances.

Since the Canadian criminal justice system continues to fail to protect and to thoroughly investigate cases of missing and murdered Indigenous women and girls, Indigenous women took the initiative to push the federal government to respond to the crisis. Million (2013) discusses how it was grassroots Indigenous groups that came together to raise awareness for the missing and murdered Indigenous women and girls, since the criminal justice system remained silent and uninterested (p. 61). In 2004 the Native Women's Association of Canada and Amnesty International drafted the report *Stolen Sisters,* which is a detailed record of missing and murdered Indigenous women and girls, that promotes the need for education and criminal justice intervention in Canada (Million, 2013, p. 34). *Stolen Sisters* asserts that Canada and its criminal justice system routinely reponsibilizes Indigenous women for the violence they experience, which is a victim-blaming approach (Fast & Richardson, 2019, p. 5). Blaming Indigenous women and girls for their own victimization normalizes racist misogynistic ideas, namely that violence against women is an individual level issue; the onus is on women alone to protect themselves, which masks systemic structural violence. As such, this implies that Indigenous women are vulnerable targets, so they should expect violence (Fast & Richardson, 2019, p. 4). Hence, *Stolen Sisters'* primary goal was

to create more awareness around the ongoing issue of gendered, racialized, and sexualized violence against Indigenous women and girls than have past 'initiatives' by the Canadian government such as the Royal Commission on Aboriginal Peoples (RCAP) that was published in 1966 (Million, 2013, p. 35). The RCAP investigated the colonial relationships between Indigenous peoples and Canada, which ultimately showed that systemic violence formed and maintains the subordinate, marginalized position of Indigenous peoples in Canada. Million (2013) states that the RCAP did not go far enough to show the magnitude of trauma done unto Indigenous communities and that continues to oppress them today, which is why *Stolen Sisters* utilized a collection of personal accounts from Indigenous peoples to explain their stories of personal and systemic colonial violence experienced in Canada (p. 35). 'Indigenism' is promoted through these personal stories of abuse, which refers to the importance of Indigeneity regarding their political identities and the power of Indigenous people's voices to tell their lived experiences of colonial violence and continued trauma in their own words and through their own practices (Million, 2013, p. 14). The concept of Indigenism challenges western ways of living through the promotion of Indigenous practices such as decolonizing practices that uphold Indigenous rights to self-determination in all areas of life (Million, 2013, p. 15). Hence, the Canadian criminal justice system and its actor's lack of response concerning the countless missing and murdered Indigenous women and girls is the result of decades of colonial violence rooted in white supremacy and sexism that have continuously denied Indigenous women protection and ultimately justice. It is only because of the strength and resilience of Indigenous peoples that has forced the criminal justice system, the police, and the media to take violence against Indigenous women as a serious issue.

2.8 Institutionalized Colonialism: The Over-Representation of Indigenous Women within the Canadian Criminal Justice System

The historic and ongoing over-representation of Indigenous peoples within the criminal justice system illustrates the magnitude of systemic colonialism in Canada. Smith (2008) explains that the 'founding' of the west during colonization led to institutionalized colonialism and the hierarchy system of the 'white heteropatriarchy' within Canada's main structures including within its justice system (p. 312). Smith (2008) explains 'white heteropatriarchy' as,

> The logic that makes social hierarchy seem natural. Just as the patriarchs rule the family, the elites of the nation-state rule their citizens. Consequently, when colonists first came to this land, they saw the necessity of instilling patriarchy into Native communities, because they realized that Indigenous peoples would not accept colonial domination if their own Indigenous societies were not structured on the basis of social hierarchy. Patriarchy in turn rests on a binary gender system; hence it is not a coincidence that colonizers also targeted Indigenous peoples who did not fit within this binary model. In addition, gender violence is a primary tool of colonialism and white supremacy. Colonizers did not just kill off Indigenous peoples in this land, but Native massacres were always accompanied by sexual mutilation and rape. As I have argued elsewhere, the goal of colonialism is not just kill colonized peoples, but also to destroy their sense of being people (Smith, 2008, p. 312).

Since a white supremacist, sexist, and colonial perspective is entwined within the foundation of Canadian institutions, white, heterosexual males are privileged with power and resources while racialized, Indigenous, queer people and females are less fortunate. Moreover, if an individual or group experiences intersectional oppressions, including being both queer and Indigenous, these 'subordinate' identities will create a unique array of oppressions that will impact the lived experiences of the person or group in a negative manner.

For instance, Indigenous communities, especially women, are oftentimes over-policed and over-incarcerated despite being victims of violence originating from the intergenerational trauma

produced by Canada's past and ongoing colonial treatment of Indigenous peoples (Million, 2013, p. 40).

2.9 Indigenous Women and Over-Policing

Due to ongoing settler-colonialism and the effects of intergenerational trauma, Indigenous women are highly policed and are thus extremely vulnerable to encountering the criminal justice system (Million, 2013, p. 4). Intergenerational trauma refers to sufferings and hardships that have been passed down through multiple generations of Indigenous peoples, which means that children, their parents, their grandparents, and great grandparents often share in the afflictions from past state-induced colonial trauma (Elias et al., 2012, p. 1561). As such, generations of Indigenous peoples live in poor circumstances shaped by poverty, domestic violence, familial violence, substance issues like alcoholism, and suicide; the Canadian government created these circumstances for Indigenous peoples, however, Indigenous peoples are criminalized and punished by the Canadian criminal justice system (Million, 2013, p. 73). Monture-Angus (1998) explains how the criminal justice system operates from a colonial foundation that ultimately reinforces a racist status quo using over-policing to strategically criminalize practices that are plentiful within Indigenous communities due to state-induced colonial violence (p. 3). For example, it is a criminal offense to drink alcohol while pregnant since it can result in Fetal Alcohol Syndrome (FAS), which intensifies the risk of birth defects and mental health problems for babies (Monture-Angus, 1998, p. 3). However, often women who are charged with drinking while pregnant are Indigenous women; yet Indigenous women are more likely than non-Indigenous women to suffer from alcoholism because they have the additional stress of coping with intergenerational trauma. Even though FAS is a real issue that can severely harm babies, the criminal justice system arguably

functions from a colonial standpoint that criminalizes more Indigenous women than non-Indigenous women for FAS.

In a similar vein, Million (2013) states that the criminal justice system is an extension of colonialism because it uses its actors to strictly police Indigenous communities since said communities often experience high rates of domestic violence and sexual violence, however the system fails to acknowledge that the high levels of violence exist because of colonial trauma (p. 39). As such, the more Indigenous women use their voices to try to end domestic violence and patriarchal abuse, the more policing will occur, which reinforces a vicious cycle where the justice system responds to violence by providing more intense surveillance. This is problematic because attempts to 'fix' domestic violence through the criminal justice system can lead to unintended gendered and racialized effects; for example, in trying to implement more severe sanctions for domestic abusers, women also began to be charged as well, which is called 'double charging' (Million, 2013, p. 39). Ultimately, this led to more Indigenous women encountering the criminal justice system for fighting their abusive partners and thus increasing their risk of being charged in the process.

2.10 The Over-Representation of Indigenous Women in Prisons

Indigenous women are vastly over-represented in prisons, which reinforces institutionalized colonialism and sexism within the Canadian criminal justice system. Indigenous peoples have remained the most incarcerated peoples in Canada, making up 38 percent of Canadian prisoners, despite making up approximately only five percent of the population (Grekul, 2020, p. 4). Indigenous women and other marginalized communities are at a higher risk of incarceration because of 'trauma trails': paths that led individuals and groups into the justice system that originated from experiences pertaining to ongoing discrimination and victimization, and

ultimately, led to criminal activity for the purpose of survival (Grekul, (2020), p. 3). Because of continuous hardships and sufferings regarding the effects of intergenerational trauma, many Indigenous women live in social conditions that make them vulnerable to crime. For instance, violent social conditions, such as those of disproportionately experiences by Indigenous women, often lead to violence because crimes are committed in reaction to the negative environment (Comack, 2007, p. 27). It is not uncommon for women who commit crimes to have been previously victimized, which showcases the victimization-criminalization continuum, as the commission of illegal acts is often linked to a position of 'helplessness' (Comack, 2007, p. 7). For example, there are staggering levels of domestic violence within Indigenous communities whereby many Indigenous women must survive dangerous situations in ways that may put them at risk of criminalization. In this way, Indigenous battered women are vulnerable to contact with the criminal justice system and incarceration.

Countless incarcerated Indigenous women possess histories of victimization and abuse from their families and their intimate partners, where these cycles of domestic violence are largely the result of intergenerational trauma (Million, 2013, p. 40). In 1990, *Creating Choices,* a report on federally incarcerated women in Canada, was published noting that approximately ninety percent of incarcerated Indigenous women had experienced physical abuse and sixty one percent had experienced sexual abuse (Comack, 2007, p. 8). Jana Grekul (2020) argues that the criminal justice system treats Indigenous peoples unjustly due to underlying factors of colonialism. Notably, she reports that Indigenous women receive harsher sentences than non-Indigenous women, Indigenous women are disproportionately incarcerated, Indigenous women are less likely to receive early parole than non-Indigenous women, and that Indigenous women are given no plan for community support when released from prison, and so there is a high recidivism rate (p. 4).

Hence, many Indigenous women become stuck within a vicious cycle of the criminal justice system since rehabilitation in broken communities suffering with the circumstances of intergenerational trauma is unlikely.

Comack (2007) states that the prison system has historically utilized a sexist perspective of women by promoting a 'victimized woman' discourse, which refers to the notion that criminalized women cannot help themselves; thus, simultaneously reinforcing patriarchal dominance and the subordination of women (p. 12). The 'victimized woman' discourse is problematic because not only does it deny the fact that women possess agency and resilience, but it also helps to justify the forced use of psychiatric medication on incarcerated women (Comack, 2007, p. 13). By strategically labelling women as 'mad' and in need of medication, the strict control over women's bodies is maintained institutionally (Kilty, 2012, p. 163). Many incarcerated Indigenous women are treated with anti-psychotic medication, and they are sometimes denied the option to refuse treatment (Kilty, 2012, p. 163, p. 166). Therefore, the criminal justice system arguably operates from a foundation of sexism and colonialism, as it continuous to over-incarcerate and sometimes forcibly medicate many Indigenous women, which removes agency and reinforces strict control over marginalized peoples. The over-representation of Indigenous women in Canadian prisons reinforces the colonial, sexist foundation of the criminal justice system through the reinforcement of 'double victimization'. 'Double victimization' is a legal concept that refers to the idea that the criminal justice system, rather than rehabilitating people, revictimizes marginalized people and groups (Grekul, 2020, p. 8). In this way, Indigenous women, who are often victimized by family members and intimate partners, are also often revictimized by the criminal justice system (Million, 2013, p. 40). Indigenous women thus experience ongoing victimization through systemic colonialism in Canada, intergenerational trauma from residential

schools and the sixties scoop, and are often revictimized by the Canadian criminal justice through over-policing and mass incarceration.

2.11 Indigenous 'Initiatives' within a Colonial Criminal Justice System

Many Indigenous scholars argue that a violent colonial structure such as the criminal justice system cannot be changed by the additions of Indigenous 'initiatives' because the foundation of the institution remains colonial. Patricia Monture-Angus (1998) argues that the colonial legacy of the criminal justice system that has historically criminalized Indigeneity cannot simply add fractions of Indigenous cultural practices into the system and expect long term change (p. 3). Hence, while the implementation of Indigenous cultural initiatives is perhaps a step in the right direction by means of cultural inclusivity, they are largely ineffectual in terms of structural change. For example, in the late twentieth century, the Canadian criminal justice system introduced Indigenous practices for the purpose of cultural relevancy such as sentencing circles, Elders on parole boards, healing lodges, and Gladue principles for sentencing. Although the implementation of Indigenous practices may in fact help certain criminalized Indigenous peoples, these Indigenous resources are limited, and not always available to all Indigenous peoples who enter the criminal justice system. For example, a sentencing circle is a practice where various parties, such as the offender, the victim, Elders, and family members join to try to restore peace between the parties (Jones & Nestor, 2011, p. 50). Indigenous peoples, however, do not always have the option of participating in a sentencing circle, as it depends on the offender's personal ties to the community and the sentencing judge's discretion to make a recommendation for a circle. Furthermore, if given a sentencing circle, the sentencing judge must later consider the events which occurred during the sentencing circle; however, this is arguably highly subjective, and so there is no guarantee the sentencing circle will lessen sentences (Jones & Nestor, 2011, p. 58). Another example of an

Indigenous initiative in the criminal justice system is Gladue principles for sentencing Indigenous offenders, which originated from the Supreme Court case *R. v Gladue* in 1999 (Roach, 2009, p. 470). The Gladue principles, in section 718. E of the *Criminal Code,* instruct judges to consider the Indigenous experience such as hardships associated with racism, colonialism, and traumas when deciding a sentence (Roach, 2009, p. 470). As well, judges are instructed to consider the appropriateness of a community sentence over a custodial sentence to help reduce the over-representation of Indigenous peoples in prisons (Roach, 2009, p. 470). Nevertheless, despite these Indigenous centred initiatives, over the past thirty years there has been relatively no change in the vast over-representation of Indigenous peoples in prisons and the recidivism rate for Indigenous offenders remains high (Sheehy, 2014, p. 189).

Some Indigenous scholars argue that the addition of Indigenous initiatives is merely symbolic, a way for the criminal justice system to mask its colonial legacy concerning Indigeneity. Much like the federal government's apology following the Truth and Reconciliation Commission report, the over-representation of Indigenous peoples, especially women in prison remains unchanged just like the colonial treatment and discrimination of Indigenous peoples remains unchanged (Million, 2013, p. 20). Similarly, the federal government's Royal Commission on Aboriginal Peoples (RCAP), which investigated the colonial relationships between Canada and Indigenous peoples, admitted to the existence of colonial violence, however, the commission did nothing to change the lack of self-determination and rights for Indigenous communities (Million, 2013, p. 35). Canada operates on the premise of acceptance of diversity; however, the circumstances of marginalized communities have not improved enough or quickly enough. As such, these apologies, reports, and cultural 'initiatives' are arguably facades aimed to cover up the continual mistreatment of racialized and Indigenous peoples, queer folks, women, and other

marginalized groups that are routinely subject to colonial and sexist systemic discrimination within the Canadian criminal justice system.

2.12 PART TWO: Problematizations of Battered Women's Syndrome in Literature

Battered women's syndrome (BWS), despite its goal to better explain the thoughts and behaviours of female victims of domestic violence, can be problematized in various ways. First, BWS is problematized as a legal problem within the Canadian criminal justice system. Second, BWS is problematized as a medical problem, specifically as a mental illness within the Diagnostic and Statistical Manual Five (DSM-5). Third, BWS is problematized as heterosexist, as it excludes the experiences of lesbian and transgender women. Fourth, BWS is problematized as a patriarchal problem that relates to the dominant discourses of Canadian society. Finally, BWS is problematized as a racial problem in relation to its lack of recognition for defendants of non-white races and ethnicities.

2.13 Battered Women's Syndrome as a Legal Problem

When problematized as a legal problem, BWS is situated as a problematic explanation for women's violence. It is problematic that BWS acts only as an explanation from expert witnesses, such as psychologists, for battered women who have killed their intimate abusers (Wells, 2010, p. 356). BWS, within the legal realm, is considered a 'partial defense' because it can help to lessen the charge if it is argued successfully but BWS cannot lead to the acquittal of battered women who kill (Wells, 2010, p. 356). Before the implementation of BWS in courts in 1990, battered women did not have access to any specific support that incorporated the complicated issue of domestic violence and a plea of self-defence (Shaffer, 1997, p. 3). In this way, battered women who killed were forced to utilize other legal defenses to the best of their abilities despite their lack of specific relevance such as automatism, insanity, or self-defence (Kasian, Spanos, Terrance & Peebles,

1993, p. 317). Automatism asserts that an individual committed an illegal act, such as murder, involuntarily and thus lacks malicious intent (Kasian et al., 1993, p. 290). The insanity or Not Criminally Responsible (NCR) defense states that individuals commit murder because they are seriously unwell and mentally unsound to the point of not being capable of appreciating that their actions were wrong, and the nature of the actions were illegal (Follingstad, Rogers, Welling & Priesmeyer, 2015, p. 864).

Furthermore, using self-defence to justify cases where battered women have killed is complicated because although most battered women act violently out of self-defence, they almost always do not meet the qualifications necessary to be acquitted (Schuller, Wells, Rzepa & Klippenstine 2004, p. 134). The self-defence plea was created to protect men who had been forced to protect themselves during an assault (Fitz-Gibbon & Vannier, 2017, p. 314). However, women who find themselves in situations where self-defence is necessary, such as in cases of domestic violence, are often not successful at arguing this defense because the danger must be imminent; however, women often kill their abusers during a relatively calm period (Fitz-Gibbon & Vannier, 2017, p. 314). Therefore, since murder typically occurs during a calm stage in an abusive relationship, the risk for one's life is not considered imminent, which means that the self-defence plea does not cover the unique situations of battered women. BWS is the only explanation available to battered women that is completely applicable to situations of domestic violence, however, it remains a partial defence, only.

The first time BWS was officially implemented in a Canadian court of law was in the Supreme court case *R. v. Lavallee [1990] S.C.J No. 36* (Shaffer, 1997, p. 2). Angelique Lavallee was a victim of domestic violence at the hands of her common law partner, Kevin Rust, before she ultimately fought back and killed him with a firearm (Shaffer, 1997, p. 2). Despite the fact that

Rust assaulted her and threatened her life the night of his death, he had been walking out of a room when Lavallee shot him in the back of his head (Shaffer, 1997, p. 2). As mentioned, the traditional self-defence argument requires that the threat of severe bodily harm or death be imminent, and so self-defence was not completely applicable in this case since Rust was retreating when he was shot. Expert Witness, Dr. Shane, testified about BWS during Lavallee's trial to explain how her history of victimization and battering by her intimate abuser altered her mindset and perceived reality. As such, Lavallee may have believed she was in imminent danger because she had been living in a state of constant fear from frequent violence (Shaffer, 1990, p. 609). According to Shaffer (1990), the courts operate from a male perspective, which means that women's experiences are not properly accounted for (p. 609). Hence, battered women's experiences are not appreciated or understood by traditional legal defenses like self-defence because of the complex interplay of women's experiences coupled with trauma resulting from domestic violence. Ultimately, the jury acquitted Lavallee, however, the decision was overturned at the Manitoba Court of Appeal. The case was brought before the Supreme Court of Canada where the ultimate question was whether the expert testimony about BWS was admissible. Justice Bertha Wilson explained why the explanation for why BWS should be allowed, stating, "As long as there is some admissible evidence to establish the foundation for the expert's opinion, the trial judge cannot subsequently instruct the jury to completely ignore the testimony. The judge must, of course, warn the jury that the more the expert relies on facts not proved in evidence the less weight the jury may attribute to the opinion" (*R. v. Lavallee, 1990 CanLII, p. 1*). The expert evidence was deemed admissible and Lavallee's appeal was allowed. While many feminist scholars considered the admissibility of BWS in court as a victory for women, others found the basis of BWS sexist and demeaning to women. For instance, Shaffer (1997) argues,

> By implying that women who stayed in abusive relationships were 'afflicted' with a 'syndrome'- a word usually associated with a disease or disorder-battered women's syndrome threatened to portray battered women as dysfunctional and to undermine their claim to being rational and reasonable actors. In addition, by requiring women to exhibit a specific set of clinical traits, battered women's syndrome threatened to establish a stereotype of the 'authentic' battered woman, which might prevent some women from making legitimate use of the defence (Shaffer, 1997, pp. 8-9).

Hence, BWS contains problematic notions that battered women are mentally ill, which can call into question their degree of rationality. Furthermore, BWS arguably created a 'mold' that all battered women must fit in order to successfully argue BWS in court, which incorrectly suggests that all battered women's experiences are alike, as differences in race, culture, sexuality, ability, and so forth create different oppressive experiences.

The admittance of BWS in Canadian courts led to the *Self-Defence Review* by Judge Ratushny, who critically examined 98 cases where women had been convicted of killing their male intimate partners (Statscan, 2015, p.1). The review analyzed whether acquittals or reductions in sentences were justified given the established relevancy of BWS. Judge Ratushny ultimately recommended that three out of the 98 cases be reduced in sentence and that the identities of these women remain anonymous because the review was considered controversial (Statscan, 2015, p. 1). Several Canadian media outlets criticized Judge Ratushny for her 'leniency' towards battered women wo kill their abusers. For example, Watts, from the REAL Women of Canada Conservative Advocacy Group stated, "We should be cautious about rewriting laws that would enable a specified group of people to take the law into their own hands, sending a message that women are better off killing abusive mates than leaving them" (Krueger, 1997, p. 26). This demonstrates the problematic notions of battered women that continue to exist in contemporary Canadian society, as the complexities of domestic violence and BWS is difficult for the public to understand.

Ultimately, the effects of BWS, financial situations, children, and the threat of retaliation, along with so many other factors, keep many battered women from escaping dangerous intimate relationships. Some battered women believe they have no choice but to kill their abusers to survive.

The fact that BWS is an extension of self-defence rather than a stand-alone defense means that battered women are often given strict sentences since BWS can only lessen the severity of punishments but cannot acquit defendants (Terrance et al., 2000, p. 311). In this manner, battered women who kill are often incarcerated despite, the often, years of frequent violence they endured at the hands of their intimate partners. Therefore, from a legal standpoint, BWS can be problematized as an unsatisfactory legal protection for battered women who kill their abusers.

2.14 Battered Women's Syndrome as a Medical Problem

BWS is included in the DSM-5, which is the diagnostic and statistical manual for all recognized mental disorders by the American Psychiatric Association as of 2013; BWS appears as a sub-category of Post-Traumatic Stress Disorder (PTSD) (Millen, Kennedy, Black, Detullio & Walker, 2019, p. 852). PTSD can occur in individuals after they have experienced trauma from war or sexual assault, however, certain people are more inherently prone to developing PTSD than others after experiencing trauma (Millen et al., 2019, p. 853). Symptoms of PTSD include trouble sleeping, flashbacks regarding traumatic events and anxiety (Millen et al., 2019, p. 853). Similarly, BWS can develop after women experience frequent or long periods of domestic abuse and these symptoms can include feelings of guilt, denial of abuse and constant fear (Sánchez & Lopez-Zafra, 2019, p. 84). Although the DSM-5 states that BWS is a mental illness, it can be argued that many battered women are not mentally ill but are, instead, reacting to situational violence at the hands of their abusive partners. For example, although certain mental illnesses such as Asperger's and Autism Spectrum Disorder are considered to have biological origins, BWS appears to be reaction

to the experience of constant abuse. Therefore, it is problematic to consider BWS as an inherent mental disorder because this would erase the contextual factors of abuse that are relevant to cases of domestic violence. Excluding women's experiences of abuse and diagnosing them with a disorder not only pathologizes battered women but silences the fact that they are being abused by their intimate partners.

The term, 'battered women's *syndrome*', insinuates that battered women are mentally ill. Using the term *syndrome* is arguably a form of epistemic violence that reinforces problematic stereotypes about women such as that they are emotionally unstable or even mentally deranged (Plumm & Terrance, 2009, p. 188). It strategically erases the contextual experiences of battered women and thus eliminates the long histories of abuse they have endured, replacing that history with a biological flaw that makes one more susceptible to intimate abuse. Furthermore, the term *'battered* woman' implies that women in abusive relationships are constantly beaten, which is not the case for all victims of domestic violence as abuse can take many different forms such as emotional abuse and manipulation (Walker, 2006, p. 149). By insinuating that all 'real' battered women need to be physically beaten in order to be a 'battered woman' downplays the other forms of abuse that women experience. Not all women who are or have been in abusive relationships want to be labeled as 'battered women', which can be conflated with weakness, because these are the women who arguably exert the most strength and resilience when they successfully leave dangerous relationships. In this way, using the word 'syndrome' to medicalize and pathologize battered women devalues their personal experiences and labels them as mentally ill.

BWS is included within the DSM-5 as a mental illness that has a high rate of co-occurrence with other mental illnesses (Gleason, 1993, p. 2). Specifically, BWS is frequently experienced alongside major depression, generalized anxiety, agoraphobia, substance abuse, sexual

dysfunction, and suicidal tendencies (Gleason, 1993, p. 2). If a battered woman is experiencing BWS then it is likely that she will also experience another type of mental disorder, as she will be more psychologically vulnerable because of her 'weakened' mental state. This is a problematic assumption because it, again, insinuates that certain women are more prone to mental disorders instead of acknowledging that domestic violence, that many battered women tend to endure for years on end, has very little to do with their innate psychological states. In this way, problematizing BWS as an individual medical issue masks the situational context of abuse and pathologizes battered women.

2.15 Battered Women's Syndrome as a Heterosexist Problem

Battered women's syndrome assumes that all battered women experience violence from male intimate partners, which excludes lesbian battered women (Torres- Ahumada, 2012, p. 27). Women who are in same-sex relationships can also experience domestic violence and thus the term 'battered woman' itself becomes muddied (Torres-Ahumada, 2012, p. 27). If the 'battered woman' is the victim, then this assumes that the abuser is male, however in lesbian relationships, the abuser is also a woman. In this manner, the BWS defense cannot appreciate the differences regarding sexuality and may not be a suitable defense for queer women. Since the premise of BWS is founded on gendered stereotypes of femininity and masculinity, such as the idea that women are passive and submissive, these may not be relevant to lesbian women (Tuel & Russell, 1998, p. 355). Within the queer community, many lesbians self-identify as certain types of lesbians, for example, 'femme' or 'butch'. A 'femme' lesbian encompasses stereotypical aspects of femininity such as softness and prettiness, whereas a 'butch' lesbian encompasses more masculine attributes such as toughness and assertiveness (Tuel & Russel, 1998, p. 352). As such, if a femme lesbian is a battered woman who killed her intimate partner and argues BWS, she could likely conform to the necessary

gendered stereotypes associated with traditional femininity. However, if a butch battered woman killed her abuser and attempted to argue BWS as a defense, it would arguably be less likely for her to be successful in court because she would not encompass feminine ideals. Therefore, BWS appears to only be a suitable defense for cisgendered, heterosexual battered women, which discriminates against lesbian women by excluding their unique experiences due to their sexuality.

Battered women's syndrome also assumes that battered women are biologically born women; an assumption that leaves no room for transgender women (Paradis, 2017, p. 594). The term 'transgender' refers to individuals that do not agree with their assigned sex at birth and feel as though they were meant to live life as the opposite sex (Paradis, 2017, p. 593). As such, transgender folks often dress as the opposite gender or change their bodies in order to express themselves as the opposite sex. Some transgender folks decide to surgically change their bodies, while others are content to dress and present as their self-identified gender without undergoing surgery. Transgender people face enhanced levels of discrimination and violence, which leaves them vulnerable to homicide (Paradis, 2017, p. 597). In relation to domestic violence, transgender women are more likely than cisgender women, women who agree with their assigned sex, to experience violence (Paradis, 2017, p. 597). In this way, if a transgender battered woman kills her abusive partner, it is unknown if legal applications of BWS can appreciate the complexity of the relationship, as there are no empirical studies on this phenomenon. Therefore, BWS can be problematized as exclusionary regarding lesbian and transgender women.

2.16 Battered Women's Syndrome as a Patriarchal Problem

Battered women's syndrome, despite being a female-specific defense, appears to be riddled in patriarchal undertones that subtly maintain the subordination of women within the criminal justice system in Canada. When critically examined, we see that BWS encompasses many

gendered stereotypes that are harmful to women and that are used to deprecate them in order to reinforce male dominance (Plumm & Terrance, 2009, p. 188). The basis of BWS is that battered women act irrationally due to deficits in their mental capacity to make 'proper' decisions. BWS asserts that battered women suffer mentally from domestic abuse, which causes them to behave abnormally (Walker, 1997, p. 145). In this way, BWS can be interpreted as implying that battered women are mentally unstable individuals who 'choose' to stay in abusive relationships. BWS assumes that these women are not capable of overcoming their abuse mentally, and so their brains and thought processes essentially began to fail, as their 'irrational' emotions take over (Plumm & Terrance, 2009, p. 187). Hence, the very idea that battered women are mentally unstable and emotional supports the gendered stereotype that women are irrational and hysterical (Plumm & Terrance, 2009, p. 188). This is a harmful stereotype that not only implies that women cannot control their emotions, but also reinforces the patriarchal idea that women need to be taken care of by men. Labelling women as emotional, erratic, and in need of male guidance reinforces androcentrism in society and maintains patriarchal dominance. Therefore, BWS, as a female-specific defense is a form of epistemic violence within the Canadian criminal justice system.

In order to successfully argue BWS in court, the battered woman must be presented in a certain manner that fits the mold of BWS and can be appreciated by the jurors (Terrance, Plumm & Kehn, 2014, p. 404). BWS depicts battered women who kill their abusers as quiet, passive women who killed out of fear and confusion due to constant domestic abuse (Bradley, 2015, p. 386). Since BWS describes battered women in a way that suggests they are weak and completely submissive to domestic violence, this can fortify patriarchal ideals within the criminal justice system because to defend themselves, battered women must align themselves with this stereotype. However, all cases involving battered women who kill their abusers are unique and many battered

women exercise great strength and resilience. For example, numerous battered women who have reported staying in abusive relationships do so for the sake of their children because their abusers have threatened to harm their children if they left the household (Kern, Libkuman & Temple, 2007, p. 1516). As well, many battered women are threatened with violence against family members if they were to report the abuse to criminal justice authorities or to hospital staff (Kern et al., 2007, p. 1516). This problematic label is harmful to battered women because it reinforces the stereotype that battered women freely choose to comply and stay in harmful relationships, which wrongly implies that they are simply passive to violence. Moreover, this stereotypical depiction upholds patriarchy in the Canadian criminal justice system because it dehumanizes battered women and pathologizes their supposed acceptance of their abuse.

Furthermore, jurors often find battered women who killed less agreeable if they exerted violence, retaliation, or provocation during their relationships with their abusers (Kern et al., 2007, p. 1517). BWS dictates that battered women be stereotypical 'female victims' that are small, feeble, and unable to physically fight off their attackers, which represents the stereotypical idea of femininity (Walker, 2006, p. 153). For example, while the stereotypical masculine man often encompasses strength, aggression, and domination, the stereotypical feminine woman usually encompasses softness, passivity, and submissiveness to men (Walker, 2006, p. 153). Hence, BWS appears to reinforce these gendered stereotypes that ultimately uphold patriarchal violence between heterosexual partners. This is problematic because each battered woman is unique and thus some women will choose to fight back or even initiate violence with their abusers. If BWS is presented to jurors in a way that reinforces gendered stereotypes of masculinity and femininity but the battered woman on trial utilized violence or provoked her abuser, jurors will be less likely to empathize with her (Terrance et al., 2004, p. 404). Moreover, if a battered woman had retaliated

against her abuser by fighting back physically, this creates tension between the battered woman's actions and the 'passive' characteristic associated with stereotypical femininity (Kern et al., 2015, p. 1515). In this manner, to argue the BWS explanation successfully, the battered woman must fit the mold of stereotypical femininity, which essentially depreciates women and maintains patriarchal dominance within the Canadian criminal justice system. By asserting that battered women killed their abusers in moments of spontaneity that momentarily deviate from their 'feminine' selves, this maintains the patriarchal narrative that women are subordinate to men except in rare situations.

2.17 Battered Women's Syndrome as a Racial Problem

Battered women's syndrome was first identified by a white cisgendered female psychiatrist, Lenore Walker, who focused on gender-based violence within intimate relationships (Walker, 2006, p. 145). Although Dr. Walker attempted to explain the complicated experiences of battered women and to shed light on why they sometimes kill their abusers, BWS fails to recognize any other aspects besides gender and ignores other issues such as race, ethnicity, class, ability and so forth. The exclusion of various axes of oppression besides gender is taxing for a number of reasons. By ignoring the aspects of race and ethnicity within the BWS defense, this simultaneously ignores the fact that many battered women in Canada are racialized and Indigenous women (Stubbs & Tolmie, 1995, p. 125). The term 'racialized' refers to differentiating people by race, which is often imposed onto non-white individuals to distinguish them from white individuals (Stubbs & Tolmie, 1995, 125). Due to this lack of acknowledgment concerning race within BWS, it can be argued that BWS encompasses solely the experiences of white women, as do most North American concepts if they do not explicitly mention race or racial differences. Hence, since BWS ignores oppressions due to race and ethnicity, it does not appreciate the racial differences concerning non-

white battered women (Rothenberg, 2003, p. 782). BWS, therefore, resists an intersectional analysis, which refers to the examination of various intersecting factors of oppression that create unique experiences. For instance, Intersectionality as a feminist tool can analyze how overlapping factors such as race, gender, sexuality, and ability, that together, either privilege or oppress individuals (Nash, 2011, p. 447). However, since BWS fails to recognize how factors besides gender affect the experiences of non-white battered women we can position this legal strategy as upholding a sense of white male supremacy in the criminal justice system.

As mentioned, BWS appears to be riddled in gendered stereotypes that maintain the subordination of women, and it can be argued that these stereotypes are innately masked in whiteness. The 'ideal' battered woman is depicted using stereotypes of femininity such as passivity and submissiveness, however, these characteristics are based on white women and thus may not be relevant to racialized and Indigenous women (Mossiere, Maeder & Pica, 2018, p. 2870). For instance, while gendered stereotypes of femininity regarding white women include softness, obedience and purity, gendered stereotypes regarding Black women often include aggressiveness, clamorousness and hyper-sexualization (Mossière et al., 2018, p. 2871). Therefore, gendered stereotypes of femininity for white and Back women are not only different but are arguably in opposition, which means that racialized battered women are less likely to successfully argue BWS in court (Sokoloff & Dupont, 2005, p. 55). BWS implies that all women belong to the same universal category and are all affected in the same way by domestic abuse (Mohanty, 2003, p. 22). However, racialized women do not have the exact same experiences as white women, and so racialized *battered* women will not share the same experiences as white *battered* women. As such, BWS appears to exclude racialized battered women because BWS fails to acknowledge race.

In Canada, many battered women are Indigenous, however, BWS fails to acknowledge Indigeneity (Tutty, Radtke, Thurston, Nixon, Ursel, Ateah, & Hampton, 2019, p. 107). This is problematic because the Indigenous population is a vulnerable group in Canada that has been specifically vulnerable to incarceration (Tutty et al., 2019, p. 107). As such, it can be argued that the criminal justice system is an extension of colonialism as despite various 'initiatives' to accommodate the unique diverse cultures and associated experiences of Indigenous peoples, such as the addition of healing lodges and Elders who sit on parole boards, the criminal justice system and its defenses are masked in whiteness that reinforce colonial violence (Monture-Angus, 1998, p. 195). In this way, Indigenous battered women who kill their abusers may be more susceptible to incarceration than non-Indigenous battered women because Indigeneity remains unacknowledged within BWS, and the criminal justice system remains a colonial structure.

Furthermore, when compared to non-Indigenous women, more Indigenous women are considered 'high risk' offenders while in prison, which means that they are susceptible to aggressive policing and surveillance (Million, 2013, p. 40). Since many Canadian battered women who killed their abusers are charged with manslaughter, they are sentenced to incarceration in federal prison (Sheehy et al., 2012, p. 396). Typically, offenders who are labelled 'high risk' are described as violent, malicious offenders who killed in planned and deliberate ways or are mentally ill and unpredictable (Sheehy et al., 2012, 395). However, Indigenous peoples, regardless of their crimes, are often considered 'high risk' offenders, which means they are often treated more severely due to racial differences (Million, 2013, p. 47). The violent colonial treatment of Indigenous peoples by the Canadian criminal justice system reinforces institutionalized racism in Canada.

In addition, Indigenous women experience the highest rate of domestic violence in Canada when compared to other women of different races and ethnicities (Monture-Angus, 1998, p. 199). In this way, it can be argued that Indigenous battered women may be more likely to commit intimate homicide than non-Indigenous battered women. Due to Canada's colonial treatment of Indigenous peoples since first contact, countless Indigenous peoples suffer from substance abuse issues and mental illness, which can make them more susceptible to interpersonal violence (Monture-Angus, 1998, p. 199). For example, drugs, alcohol, and mental disorders alter people's thinking and can sometimes make them more prone to violent or aggressive behaviour. Despite these implications, the BWS explanation fails to acknowledge Indigeneity or colonial influences that play crucial roles in the lives of Indigenous battered women. Therefore, BWS may inadvertently exclude the experiences of Indigenous battered women who kill their abusers as their Indigeneity, a core component regarding their experiences, fails to be recognized.

2.18 Conclusion

This literature review critically examined the various problems related to both Indigeneity and Battered Women's Syndrome. In terms of Indigeneity, mainstream accounts of Canadian history were problematized as colonial, as Indigenous peoples are often stereotyped or completely excluded from white settler accounts of history. As well, the violent colonial events such as the implementation of the *Indian Act,* residential schools, and the sixties scoop were critically discussed. Moreover, the Canadian criminal justice system was problematized as an extension of colonialism because of the lack of criminal justice response concerning the countless missing and murdered Indigenous women and girls, the ongoing over-policing and mass incarceration of Indigenous peoples, and the failed attempts to change a colonial justice system with the simple addition of Indigenous cultural initiatives.

In terms of BWS, despite having been developed to better understand the unique experiences and mind sets of battered women and battered women who kill, in the literature it is often viewed as a legal problem, a medical problem, a heterosexist problem, a patriarchal problem, and a racial problem. Moreover, BWS resists intersectional analysis by failing to recognize relevant overlapping factors such as differences in racial oppressions for racialized and Indigenous battered women. As well, BWS arguably reinforces gendered stereotypes that devalue the experiences of battered women, which ultimately strengthens white heteropatriarchy and further marginalizes women.

Chapter 3: Theoretical Framework

3.1 Introduction

The theoretical framework for this research study consists of bridging Indigenous Feminisms and Intersectionality. Both Indigenous Feminisms and Intersectionality originate from the realm of Feminist Theory, as they aim to challenge patriarchal power dynamics that maintain the oppression of women. Indigenous Feminisms is often written as plural to indicate that Indigeneity is a heterogenous concept, and so the theory tackles several different issues for Indigenous peoples such as gender inequality, racism, and colonialism (Suzack, 2015, p. 261). Indigenous Feminisms examine how common ideologies, structures, and institutions maintain the subordination of Indigenous peoples through practices that are rooted in colonialism and white supremacy (Dulfano, 2015, p. 3). For this research, an Indigenous Feminist lens will be implemented to examine how the criminal justice system, its practices, and its actors, reinforce a hegemonic power dynamic that strengthens the white heteropatriarchy and simultaneously denounces Indigeneity. The 'white heteropatriarchy' refers to the socio-political structural of Canadian society where heterosexual cisgendered white males are the most privileged with power and resources, whereas women, racialized people, and queer folks are silenced and excluded (Smith, 2008, p. 312).

Intersectionality is a complex theoretical tool that can be utilized in various ways: as its own field of study within academia, as a theory derived from Feminism, or as a tool for social justice projects (Collins, 2015, p. 3). Intersectionality is used to deepen understandings concerning interlocking systems of oppressions that impact the lives of marginalized communities (Razack, 1998, p. 897). For instance, an intersectional lens analyzes how individual factors like race, gender, and sexuality intersect, and how structural factors like patriarchy, colonialism, and white supremacy intersect to impact people's lives (Sokoloff & Dupont, 2005, p. 43). For this study,

Intersectionality will be utilized as an analytical tool to help better understand the unique experiences of Indigenous battered women who killed their intimate abusers.

3.2 Indigenous Feminisms

Indigenous Feminisms do not align with mainstream 'hegemonic' or 'institutionalized' types of Feminism often present in academia because these tend to focus only on gender equality pertaining to the power of men over women (Dulfano, 2017, p. 84). For instance, Radical Feminism, which gained popularity during the second wave of Feminism, focuses on the divide between men and women in terms of power and privilege and is based on the domination of women by men in all areas of society (McLaren, 2002, p. 7). While many feminist theories focus on the pursuit for gender equality though dismantling the patriarchy that keeps men in the power positions, Indigenous Feminisms emphasize the importance of challenging white supremacy, colonialism, and how institutions maintain the oppression of Indigenous peoples (Dulfano, 2015, 37). During colonization, the west violently exploited Indigenous peoples, stole their land, and worked to assimilate Indigenous cultures. Indigenous Feminisms draw on the concept of 'decolonization' to promote Indigenous self-determination in all areas of life (Million, 2013, p. 13). Indigenous self-determination encompasses Indigenous peoples' right to self govern, to raise their own children, and to be included in the political public sphere (Million, 2013, p. 4). Moreover, Indigenous Feminisms fight to dismantle the 'vertical hierarchy' that places white, upper class males in power and pushes women and racialized minorities into the margins where resources are scarce (Dulfano, 2015, p. 3). This 'vertical hierarchy' organization appears natural because of white heteropatriarchy, which has historically enforced a white male supremacist power structure that depicts non-white women as subhuman (Smith, 2008, p. 312). Indigenous Feminisms instead aims to build a 'horizontal structure' where differences in gender, race, culture, class, and so forth

can exist holistically without the need to dominate and oppress. Challenging dominant ways of producing knowledge through storytelling and testimonials is how Indigenous Feminisms began to gain traction in academia in the 1980s (Ross, 2009, p. 44).

Indigenous feminist scholars began to voice their experiences with colonial oppression and violence, which paved a way for the introduction of Indigenous peoples within the academic sphere (Dulfano, 2015, p. 35). By sharing their personal accounts of subordination and discrimination, Indigenous women brought the often silenced and marginalized positions of Indigenous peoples to light in order to create a space for themselves and fight perceptions of 'internalized colonization' (Dulfano, 2015, p. 4). 'Internalized colonization', according to Million (2013), refers to the pain and shame that many Indigenous peoples embody because of the colonial and racist spaces they inhabit (p. 62). Moreover, internalized colonization also pertains to how non-Indigenous people internalize their feelings and prejudices towards Indigenous peoples, which are often rooted in colonial stereotypes such as the problematic assumption that Indigenous peoples are drunks or sexual savages (Million, 2013, p. 64). For example, non-Indigenous people sometimes operate using a colonial 'white gaze' that views Indigeneity as a profane, shameful, and sub-human trait (Million, 2013, p. 48). Indigenous feminists continue to battle internalized colonization by using a deeply cultural approach grounded in both gender and cultural identities that challenges dominant ways of knowledge production, which had historically rejected storytelling and testimonials as valid forms (Dulfano, 2016, p. 85). For instance, Million (2013) explains that the academy routinely challenges the legitimacy of affective narratives composed by Indigenous women because they articulate the emotional lived experiences of Indigenous hardships that highlight the colonial nature of Canada, including within its academic institutions (p. 56). Indigenous narratives threaten the objectivity of colonization that is advanced by white colonial perspectives that depicts

colonization as natural. As such, when Indigenous peoples voice their experiences with residential schools and thus the physical, emotional, and sexual abuse they endured at the hands of the state, it disrupts settler-truths that constitute mainstream Canadian history so as to hide our legacy of colonial violence (Million, 2013, p. 66). For example, Slipperjack, an Indigenous feminist writer, who writes stories about how she felt growing up as an Ojibwe child, rejects the framework of western academia that denounces emotion and promotes objective analyses (Slipperjack, 1987, p. 15). By discussing her thoughts and feelings regarding discrimination and alienation as an Indigenous person, Slipperjack (1987) challenges academic gatekeepers by weaving her story through the guidance of Indigenous Feminisms to solidify its validity within the academy (p. 15). In this way, many Indigenous scholars utilize Indigenous Feminisms to dismantle colonialism by voicing their lived experiences of violence, which has helped Indigenous Feminisms gain traction within the academy over the past few years.

There are many important Indigenous feminist theorists whose work has been integral to Indigenous feminist theory. First, while Andrea Smith contributed greatly to Indigenous Feminisms, she remains a controversial figure because she was ‘outed’ as a non-Indigenous woman who had claimed to be Indigenous (Shorter, 2018, p. 1). Nonetheless, she has arguably enriched Indigenous Feminisms by helping to dismantle various problematic norms and ideologies that continue to oppress Indigenous peoples. For instance, Smith (2008) explains the ‘colonizing trick’ as a façade that suggests the state was founded on democratic principles, while the real foundation of state power is rooted in white supremacist capitalism and colonialism (p. 310). By ‘white supremacist capitalism’, Smith (2008) refers to the state’s neoliberal agenda where the privatization of markets emphasizes individualism that leaves many Indigenous peoples in poverty as the welfare state slowly crumbles (p. 312). The ‘colonizing trick’ therefore masks the violent

roles that colonialism and imperialism have played in state formation working together to normalize the assimilation of Indigenous cultures and the state induced poverty of Indigenous communities (Smith, 2008, p. 311). Smith (2008) argues that while the state attempts to appear fair and open to diversity, it is based on the exclusion of racialized bodies like Indigenous peoples who have never truly been accepted into the social, economic, or political realms of society (p. 311). Smith (2008) considers settler-colonialism a structure that constantly oppresses Indigenous peoples rather than a single event in history (p. 311). In this way, Smith (2008) explains that Indigenous Feminisms, or 'Native Feminism' as she sometimes calls it, is vital to the deconstruction of state norms and institutions that maintain the oppression and subordination of Indigenous peoples (p. 311). For instance, the west enforced heteropatriarchy onto Indigenous peoples during colonization as a method of control to force them into their hierarchy system (Smith, 2008, p. 312). Smith rejects heteropatriarchy and argues that a complete uprooting of violent structures, like the criminal justice system, is necessary for the formation of new systems that welcome cultural diversity.

To do this, Smith (2014) states that Indigenous peoples, women, and racialized minority groups must politically organize in a strategic fashion, to challenge the dominant power structure that works to normalize oppression and violence against marginalized groups (p. 101). Decolonization is key to dismantling the white supremacist heteropatriarchy that maintains the naturalization of colonial violence; however, Smith (2014) warns that simply making changes to a flawed colonial system will not bring about true change (p. 93). Therefore, decolonization requires the complete destruction of violent institutions and their norms in order to rebuild them from the ground up. Simpson and Smith (2014) urge Indigenous peoples to challenge dominant western narratives that reinforce the exclusion and marginalization of Indigenous peoples (p. 34).

It is important to voice counter-narratives to mainstream narratives that are instead based on inclusion and celebrate Indigeneity (Simpson & Smith, 2014, p. 35).

Second, Patricia Monture-Angus is a Mohawk Indigenous feminist scholar who focuses on the problematic foundation of the criminal justice system and its deep entrenchment in colonialism (Monture-Angus, 1998a, p. 1). Monture-Angus (1998b) discusses the criminal justice system's historic failure in protecting Indigenous peoples and how Indigeneity is routinely ignored within the legal institution (p. 192). The 'Indigenous factor' or anything relating to Indigeneity, according to Monture-Angus (1998b), is excluded from the criminal justice system, which ultimately denies Indigenous differences and therefore punishes Indigenous peoples for their unique cultural roots (p. 193). For instance, when changes are made to the criminal justice system, such as the addition of sentencing circles for some Indigenous offenders, they are more so symbolic than effectual (Monture-Angus, 1998b, p. 2). Monture-Angus (1998a) argues that these small changes cannot change a colonial system that fails to acknowledge Indigenous ways of healing with Elders and appreciate the differences in Indigenous structural systems (p. 194). Instead, violent colonial systems, such as the western heteropatriarchal hierarchy that was enforced onto Indigenous communities as a method of control, are naturalized within Canadian institutions. Hence, institutions like the criminal justice system continue to deny many differences associated with Indigeneity and thus reinforce a colonial and racist status quo that over-incarcerates Indigenous peoples and makes this appear normal (Monture-Angus, 1998b, p. 2). By denouncing Indigenous peoples as an innately 'deviant' or 'sub-human' people that are innately violent or prone to committing criminal acts, the criminal justice system masks its colonial roots by painting Indigeneity as a deficit to hide its systemic racism. Monture-Angus (1999) explains how the criminal justice systemic ignores the colonial circumstances of Indigenous peoples,

> Often, what they experience in the city (from shoplifting to prostitution, drug abuse to violence) as a result of poverty and racism, leads them into contact with the criminal justice system. Yet, a criminal court is not interested in hearing about this long trail of individualized and systemic colonialism, which leads to conflict with the law. Courts are only interested in whether you committed a wrong act with a guilty mind. This is a clear example of how the individualized nature of law obscures systemic and structural factors (Monture-Angus, 1999, p. 5).

Therefore, the criminal justice system has historically operated from a black/white perspective, which denies Indigenous people's true cultural recognition and ongoing colonial sufferings. It is important to note, however, that after the Supreme Court decision in *R. v. Gladue* in 1999, this led to the creation of Gladue courts, Gladue reports, and Gladue Principles for sentencing (Roach, 2009, p. 470). The goal of Gladue courts, reports, and principles is to recognize how Indigenous peoples' hardships can make them more vulnerable to partake in criminal offenses, and so their unique array of systemic oppressions should be takin into consideration (Roach, 2009, p. 470). As well, the Gladue initiatives aim to provide more culturally sensitive legal environments for Indigenous defendants and aim to lessen Indigenous over-representation in prisons (Roach, 2009, p. 470). Nevertheless, Gladue initiatives have not made an effective difference; the number of incarcerated Indigenous peoples is rising in Canada (Sheehy, 2014, p. 189).

Third, Dian Million, a Tanana Athabascan feminist scholar, contributed greatly to the area of Indigenous Feminisms in her 2013 book, *Therapeutic Nations: Healing in an Age of Indigenous Human Rights.* Million (2013) examines the colonial underpinnings of the criminal justice system that have historically punished Indigenous peoples through the enforcement of racialized, heteropatriarchal laws that maintain the oppression of marginalized communities (p. 41). For instance, Million (2013) states that Indigenous peoples are framed as racialized 'others' or 'sexual savages' so that the west can hold the position of the 'hygienic middle class' that must exert control over these 'problematic groups' through violent practices like residential schools and the sixties

scoop (p. 43). Furthermore, the criminal justice system continues to fail to acknowledge how colonial violence forced Indigenous peoples into their current circumstances, which are marked by elevated rates of homelessness, poverty, mental illness, and domestic violence, instead punishing them for these hardships. For example, Million (2013) discusses how gendered heterosexual colonial practices, like rape, violence, and the hyper-sexualization of Indigenous women, are part of the basis of which the founding of the west was established, and so these factors have been institutionalized in Canada (p. 38). Million (2013) draws on Deer's work to caution that despite law reforms aimed to fight violence against women, Indigenous women still face the repercussions of a colonial justice system,

> Although feminists have been successful at developing and implementing major reforms of rape law since the early 1970's, it is not clear that these efforts have necessarily improved the climate for survivals of sexual assault…[the challenge is] that Indigenous women who are raped in the United States today face a legacy of laws that have historically encouraged the systemic rape of Native women (Million, 2013, p. 38).

Thus, even though there have been progressive changes within the criminal justice system to better protect women, the colonial foundations remain intact. Indigenous women who have survived violence now face high levels of surveillance and policing because the criminal justice system has overcompensated for gendered violence.

However, despite the integration of Indigenous feminists like Smith, Monture-Angus, and Million into the academy, there continues to be a tension that exists between mainstream institutionalized Feminism and Indigenous Feminisms. Mainstream institutionalized Feminism refers to hegemonic western Feminism, such as the aforementioned Radical Feminism, that argues that gender inequality between men and women is the reason why women are oppressed (Mohanty, 2003, p. 1). Some western types of Feminism consider the category of 'woman' as homogenous, which means that all women experience the same degree of oppression because of their gender in

relation to men (Mohanty, 2003, p. 22). In contrast, Indigenous Feminisms, like Black Feminism, recognize that all women do not experience the same degrees of oppression because various other factors, such as race, culture, class, and ability, intersect to create unique experiences (Mohanty, 2003, p. 22). As such, many Indigenous scholars problematize western Feminism as imperialist and rooted in ethnocentrism, as it denies differences like Indigeneity. Thus, it is common for Indigenous women to sometimes refrain from labelling themselves as feminists because the term *feminist* is arguably rooted in a white supremacist nature that fails to acknowledge oppressive power structures such as colonialism (Dulfano, 2015, p. 85). However, Dulfano (2015) urges scholars to view the contention between hegemonic western Feminism and Indigenous Feminisms as an opportunity for change to occur that can lead to a more culturally inclusive Feminism that acknowledges colonial heritages (p. 6). Hence, Indigenous scholars often utilize Indigenous Feminisms to fight for inclusivity as a catalyst for change that can help to dismantle ideologies, norms, and institutions that reinforce the subordination of Indigenous peoples.

This research uses an Indigenous feminist lens to critically analyze the Canadian criminal justice system as a colonial institution that helps to maintain the subordination and alienation of Indigenous peoples through both the normalization of violence towards racialized bodies and the exclusion of cultural differences. The Canadian criminal justice system frames domestic violence as an individual rather than a systemic issue, which protects the state's power by placing blame on victims and perpetrators instead of the institution (Ross, 2005, p. 45). As such, since Indigenous peoples experience high rates of domestic violence, the criminal justice system sometimes uses racial stereotypes to naturalize domestic violence amongst Indigenous communities (Razack, 1998, p. 917). For instance, the criminal justice system can sometimes stereotype Indigenous peoples as an innately violent group in order to justify stricter methods of control and surveillance.

Million (2013) explains that the state is the body that has historically inflicted violence onto Indigenous peoples and yet it is also the body that judges and decides their fate, thus demonstrating that colonial violence is reinforced within the 'justice' system (p. 63). The problem is that the addition of Indigenous cultural practices cannot change a deeply flawed system that is rooted in colonial violence. Indigenous peoples are thus often revictimized by the state, as they continue to suffer intergenerational trauma and its effects such as substance abuse, mental illness, and intimate violence, and then are often punished by the state for actions committed under these difficult circumstances. As Million (2013) states, Canada and its justice system uphold colonial violence by punishing Indigenous women through high levels of policing, surveillance, and incarceration, which disallows true justice for Indigenous peoples who are ultimately condemned by a white patriarchal system (p. 40). For example, Indigenous feminist writer, Beatrice Culleton Mosionier, wrote a book titled, *In Search of April Raintree,* that followed the lives of two Mėtis sisters who grew up in foster care, who experienced gendered sexual violence, and several encounters with the criminal justice system (Fachinger, 2019, p. 115). Culleton Mosionier discusses the problematic assumptions about Indigenous peoples, for example, that they are innately immoral or deviant people, and how such assumptions are used to deny the credibility of Indigenous peoples on trial (Fachinger, 2019, p. 123). In this way, Indigenous women on trial often must fight to show criminal justice officials, including judges, that they are not what the colonial stereotypes make them out to be; this suggests that they are condemned from the start, as the onus is on Indigenous women to fight against internalized colonization (Million, 2013, p. 63). Therefore, Indigenous Feminisms examine the institutionalized white supremacist colonial nature of Canadian institutions that maintain the subordination of Indigenous peoples. This research study uses a lens of Indigenous Feminisms to form a deeper understanding of the how the criminal justice system and its actors

treat Indigenous battered women who killed their intimate abusers and how BWS is interpreted within these unique cases.

3.3 Intersectionality

This research study also uses Intersectionality as an analytical tool to examine how Indigenous battered women who killed their abusers experienced oppression in different areas of their lives and how criminal justice actors and BWS adhere to these overlapping oppressive factors. An intersectional lens was used to analyze how interlocking systems of oppression impact peoples' experiences and to demonstrate how gender, sexuality, race, culture, and class intersect to show how people experience life, what resources are available to them, and where they lie in the 'vertical hierarchy' (Nash, 2011, p. 447). Those who embody white, male, heterosexual identities are privileged with an abundance of power and resources while racialized minorities, women, and queer folks suffer systemic discrimination and face many barriers to resources (Crenshaw, 2012, p. 1427). The notion of Intersectionality was first used by Black feminist social activist women and scholars who fought to voice how women are not simply oppressed by gender alone, but how an array of interlocking axes pushes racialized women into more subordinate social, political, and economic positions (Nash, 2017, p. 121). These connecting factors of oppression are not only individual level factors but also systemic oppressive factors like colonialism, racism, and patriarchy, which both privilege and oppress people based on innate qualities (Sokoloff & Dupont, 2005, p. 47). For example, studies suggest that the most severe forms of domestic violence are experienced by non-white women rather than white women in Canada (Sokoloff & Dupont, 2005, p. 44). Many racialized minorities are members of the lower socio-economic class, which indicates that domestic violence unduly effects racialized women of lower economic statuses. Since it is apparent that racialized and Indigenous women are disproportionately affected by domestic

violence, this should be taken into consideration by laws and legal defenses. However, this does not seem to be the case, as BWS fails to acknowledge factors like race or culture and thus does not recognize the unique socio-cultural differences wrought by Indigeneity that intersect and form Indigenous battered women's lived experiences of violence. Moreover, some criminal justice actors like judges fail to recognize unique socio-cultural differences associated with Indigeneity, which places Indigenous women at a disadvantage within the criminal justice system (Razack, 1998, p. 99). An intersectional lens helped me to analyze whether BWS can encompass the experiences of Indigenous battered women who killed their abusers by examining how oppressions related to Indigeneity are accounted for in court. Furthermore, through the guidance of Intersectionality, a deeper understanding of the interlocking systems of oppression regarding Indigenous battered women who killed was developed to help inform possible avenues for change.

This research uses an intersectional lens to critically analyze how Indigenous battered women who killed were treated by criminal justice actors and how BWS was used for sentencing these women. The goal is to examine how colonialism, white supremacy, and sexism intersect with individual oppressive factors like Indigeneity and womanhood. Since Intersectionality promotes deeper understandings of marginalized communities for the purpose of social transformation, this research analyzes how Indigenous battered women's experiences are unique within the criminal justice system due to socio-cultural differences, which are often denied importance in the application of laws (Monture-Angus, 1998, p. 8). Intersectionality as an analytic tool values subjugated knowledges, which refer to knowledge that comes from lived experiences (often of marginalized groups) but that is often denied as 'true' knowledge, which leads to a gap between theory and practice (Hesse-Biber, 2014, p. 3). Often, Indigenous peoples' voices are shunned or excluded from institutions like the criminal justice system because they are considered culturally

inferior in comparison to white people, and so speaking up against systemic discrimination puts Indigenous peoples at further risk of marginalization (Razack, 1998, p. 916). Razack (1998) refers to this process as the 'culturization of racism' through which Indigeneity is painted as a deficit and is therefore considered culturally subordinate (p. 916). In this way, I use Intersectionality in this research to show how Indigeneity is approached by criminal justice actors in an arguably racist system. Thus, Intersectionality is vital to an examination of the legal treatment of Indigenous battered women who killed their abusers in order to better understand the array of oppressions that interlock and form their unique experiences.

There are several feminist scholars who have contributed profoundly to Intersectional theory and thinking within the academy. First, Kimberlė Crenshaw coined the term *Intersectionality* in her 1989 essay, "*Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics".* Crenshaw (2013) examined the exclusion and subordination of Black women within the social, economic, and political spheres, which created unique lived experiences that are riddled with oppression (p. 303). Intersectionality, according to Crenshaw et al., (2013), is a 'work in progress', as it is a dynamic theoretical tool used to cultivate understandings pertaining to marginalized groups such as racialized women and queer folks (p. 305). Hence, an intersectional lens should help scholars examine how various factors relating to oppression intersect to impact the lives of subordinate groups that are often silenced by their white, male dominators. Possible avenues for change can be extracted after an intersectional analysis is performed since interlocking oppressive factors are highlighted to pinpoint areas that need improvement. For instance, Crenshaw (1991) utilized an intersectional lens to find out how race intersects with gender, and thus makes certain groups more vulnerable to domestic violence (p. 1242). Racialized, non-white women were found

to suffer more from domestic violence because of structural issues such as class status given that poverty and a lack of housing are more common among racialized women, so they can sometimes not afford to leave abusive households (Crenshaw, 1991, p. 1246). Moreover, some racialized women are undocumented immigrant women for whom contacting the police is not an option, as they would risk deportation (p. 1247). As well, non-white battered women can sometimes face language barriers when communicating with social services, lawyers, or women's shelters (p. 1249). Crenshaw (1991) refers to these structural issues as,

> Patterns of subordination that intersect in women's experiences of domestic violence. Intersectional subordination need not be intentionally produced; in fact, it is frequently the consequence of one burden that intersects with pre-existing vulnerabilities to create yet another dimension of disempowerment (Crenshaw, 1991, p. 1249).

In this way, Intersectionality, when utilized as an analytical tool, can help to show that systems of subordination recreate the status quo power dynamics that keep white men in power positions and racialized women in the margins of society.

Furthermore, Crenshaw (2012) states that an intersectional lens can help to show why racialized women are mass incarcerated, which can help to explain the problematic over-representation of non-white women, such as Indigenous women, in Canadian prisons. Crenshaw (2012) uses the term 'structural dynamic discrimination' to describe how the social hierarchy, which rewards white (heterosexual) males and oppresses racialized (queer) women, dictates what groups will be subjected to a high level of surveillance, policing, and ultimately punishment (p. 1427). Hence, subordinate groups within the social hierarchy are more often incarcerated, as they have more contact with the criminal justice system due to the embedded nature of racism and sexism in our hierarchical institutions and system. However, as the social hierarchy is normalized within Canadian society, so too does the over-policing of marginalized groups appear natural. As

such, racialized minorities and women are often denounced using stereotypes that work to keep them stuck within the momentum of the criminal justice system. For example, the stereotype of the 'dangerous or angry Black man' reinforces the racist notion that Black men cannot be trusted, and so the strict policing of Black communities is construed as a necessity by the state, which justifies the strict control of their bodies (Crenshaw, 1991, p. 1257). Furthermore, Crenshaw (2012) explains how stereotypes of racialized women are used to justify state control over minorities, as she explains,

> Beyond these factors are cultural representations of poor women of color as immoral and irresponsible, stereotypes that are mobilized to generate ideological justifications for their surveillance and punishment. The intersection of these spatial, structural, and cultural factors constitutes the toxic conditions by which behaviors that might otherwise be regarded as circumstantially informed are mobilized as further justification for hyper surveillance and punishment (Crenshaw, 1991, p. 1445).

Crenshaw utilizes Intersectionality as a guide to show how the reproduction of racist and sexist stereotypes help maintain the subordination of racialized women.

Second, Patricia Hill-Collins (2016), a Black feminist and cultural theorist, describes Intersectionality as a tool rather than a theory that should be used to form deeper understandings about socio-political inequalities (p. 20). Hill-Collins and Bilge (2016) analyze the various social inequalities of marginalized groups via interlocking categories of oppression related to gender, race, class, sexuality, ability, and so forth, however she stresses that Intersectionality affects each person differently (p. 20.). Hill-Collins and Bilge (2016) explain,

> Using Intersectionality as an analytical tool can foster a better understanding of growing global inequality. First, economic inequality does not fall equally on everyone. Rather than seeing people as homogeneous, undifferentiated mass, Intersectionality provides a framework for explaining how social divisions of race, gender, age, citizenship status, among others, position people differently in the word, especially in relation to global social inequality. Some people are far more

> vulnerable to changes in the global economy, whereas others benefit disproportionately from them (Hill-Collins & Bilge, 2016, p. 20).

In this way, an intersectional lens can be used to better understand the oppressive, lived experiences of subordinate groups in society such as racialized women who are more likely to have low economic statuses. This does not mean, however, that all racialized women experience the same degree of oppression, since marginalized groups are not homogenous but rather heterogeneous. Intersectionality, according to Hill-Collins (2015), should help to form a deeper understanding of groups that suffer from social, economic, political, and global inequalities and thus have less access to resources (p. 8). Furthermore, Hill-Collins and Bilge (2016) discuss the academic rise in popularity of using intersectional analyses in Women's Studies, Critical Race Studies, and Criminology, which has led to more informed knowledge about violence against women (p. 37). For example, violence against women, like domestic violence and rape, disproportionately affects women who also experience the negative affects of colonialism and racism, which are also linked to lower economic statuses (Hill-Collins & Bilge, 2016, p. 47). As such, Intersectionality helps to show how individual oppressive factors such as race, gender, and class intersect with structural oppressive factors such as racism, colonialism, and sexism to make certain groups more vulnerable to violence. For this research study, an intersectional analysis helps to show how Indigenous battered women who killed were highly susceptible to violence because of their unique interlocking systems of oppression such as Indigeneity, womanhood, patriarchy, colonialism, and white supremacy.

Moreover, Hill-Collins and Bilge (2016) explain that although Intersectionality has gained popularity within the academy, many scholars continue to struggle with its exact definition,

> By now, a general consensus exists about Intersectionality's general contours. The term Intersectionality and the critical insight that race, class, gender, sexuality, ethnicity, ability, and age operate not on unitary

> mutually exclusive entities, but as reciprocally constructing phenomena that in turn shape complex social inequalities (Hill-Collins & Bilge, 2016, p. 2).

As such, Hill-Collins and Bilge (2016) examine how Intersectionality can be used in three different ways: as its own field of study, as a strategy for analysis, and as a praxis or focal point for social justice projects (p. 3). While Intersectionality as an individual field of study and as a strategy offer advantages, Hill-Collins and Bilge (2016) appear to emphasize that mobilizing Intersectionality as form of 'critical praxis' is best because it can help illustrate the various sorts of oppression that impact people's everyday lives, which can lead to possible solutions for change (p. 32). For instance, within the criminal justice system, an intersectional lens can be utilized as a form of praxis to examine how interlocking factors like race, gender, and class intersect with colonialism, racism, and sexism to increase the vulnerability of certain groups and their degree of contact with the criminal justice system and its actors (Hill-Collins & Bilge, 2016, p. 37). Hence, Intersectionality as a focal point can help demonstrate why specific groups like Indigenous women, Indigenous men, and Black men are the most incarcerated peoples in Canada, as these marginalized groups are the most over-policed. For example, when applied today, Hill Collins' and Bilge's intersectional analysis of the over-incarceration of marginalized groups can be mirrored in the Black Lives Matter (BLM) movement that has gained momentum globally. BLM is a social justice movement that arguably uses an intersectional approach to problematize the criminal justice system as a deeply racist, colonial, and violent structure. BLM also calls out the historic over-incarceration and violence experienced by Indigenous peoples in Canada (Rwigema, 2017, p. 252). In this way, the intersection of race and gender, as well as racist and colonial underpinnings of the criminal justice system, ultimately criminalize racialized minorities and therefore maintain the hegemonic power relations.

In addition, Hill-Collins (2019) emphasizes that the strongest way to use Intersectionality is to use it as an analytical tool alongside resistance theories such as Feminist, Antiracist, and Decolonizing theories (p. 116). Since most theories arguably reproduce status quo assumptions about power and hegemony, this has normalized the process of producing knowledge and deciding what knowledge holds legitimacy. However, resistance theories challenge dominant ideologies that are rooted in patriarchy, heteronormativity, and white supremacy that reinforce the subordination of marginalized groups. In this way, an intersectional framework should be used in conjunction with resistance theories to further highlight the interlocking factors of oppression, both individual and structural, that work to maintain the exclusion of marginalized people and groups within the academy and in daily life (Hill-Collins, 2019, p. 115). For example, Hill-Collins (2019) explains that Decolonizing theories critique the western production of what is considered 'valid knowledge' because, often, Indigenous knowledge production is silenced and excluded simply due to the power dynamics between the west and Indigenous peoples (p. 116). As such, Decolonizing theories would benefit from an intersectional framework, as a deeper understanding regarding the intersection of oppressions like race and culture, and colonialism would be displayed. At the same time, research that reinforces the power of the west and denounces Indigeneity through the covert use of internalized colonization would be challenged (Hill-Collins, 2019, p. 115). This research study is therefore inspired by Hill-Collins because by using a resistance theory, Indigenous Feminisms to challenge white heteropatriarchy, an intersectional lens will then illuminate the lived realities of Indigenous battered women who killed their abusers, which are riddled with oppression.

Additionally, it is important to note the critiques of Intersectionality so that common mistakes, that many academics are guilty of making, are not repeated in this research. Intersectionality was created to recognize individuals and groups who are routinely marginalized

and silenced in society due to their subordinate political, economic, and social positions. Nash (2011) explains how although Intersectionality was coined by academic Kimberlė Crenshaw, it was Black feminist activists who first utilized Intersectionality to fight to have their experiences as Black women recognized in the public realm (p. 446). As such, Intersectionality was meant to be used as a tool to critically analyze the multiplicity of oppressions that are experienced by marginalized people. However, as Intersectionality gained traction in the academy, it became generalized into various disciplines and ultimately transitioned into what Bilge (2013) calls 'ornamental Intersectionality' (p. 409). 'Ornamental Intersectionality' is Bilge's (2013) term for when academics simply label their research as intersectional so that it appears relevant to feminist scholars, however, analyses of root problems through an intersectional lens have not been performed (p.410). Moreover, Bilge (2013) explains the 'whitening of Intersectionality' as the exclusion of racialized people from intersectional analyses, even though Intersectionality was created by Black women to highlight oppressions associated with non-white identities. In this way, Intersectionality, now that it has become institutionalized into mainstream academia, seems to have been generalized to the point that it no longer serves to better understand the experiences of marginalized groups because it has been marketed as 'something for everyone'. Thus, as this research study was conducted, mindfulness and reflexivity were used as to not fall prey to using ornamental Intersectionality by a white researcher.

3.4 Conclusion

This research project uses Indigenous Feminisms to examine the experiences of Indigenous battered women who killed their intimate abusers. By drawing on various Indigenous feminist scholars such as Andrea Smith, Patricia Monture-Angus and Dian Million, the Canadian criminal

justice system is analyzed as a violent colonial structure that reinforces the subordination of Indigenous peoples.

In addition, Intersectionality was used as an analytical tool to form a deeper understanding of how interlocking factors of oppression impact the lived experiences of Indigenous battered women who killed their intimate abusers. By applying an intersectional lens to cases where Indigenous battered women killed their partners, intersecting individual factors such as race, gender, and class, along with intersecting structural factors, like white supremacy and colonialism, were examined to show the multiplicity of oppressions that these women endured.

Chapter 4: Method

4.1 Introduction to Process

This research was conducted using thematic analysis to examine data relating to Indigenous battered women who killed their intimate abusers. This research project is qualitative, which means that through the collection and analysis of descriptive data, deeper understandings about the subjects, Indigenous battered women, were cultivated (Boyatzis, 1998, p. iv). The focus of qualitative research is to foster more insightful understandings and to assign meaning to the experiences of others so that possible avenues for positive change can later be explored (Merriam, 2009, p. 13). It is at the discretion of the researcher to interpret and derive meaning from the data in order to create a critical discussion around the research topic using a set of research questions to guide this process. There are various methods of collecting and analyzing qualitative data, such as interviewing, ethnography, focus groups, and narrative analysis, all of which explore experience (Merriam, 2009, p. 23). For this project, I conducted a thematic analysis of court transcripts and other documents from QuickLaw. The collection of data was conducted using a snowball technique, which refers to the method of finding one piece of relevant data and using its citations to find similar data. This technique was used until eight cases were selected that met the relevant criteria for inclusion in the research project. The examination of the transcripts and other QuickLaw documents was conducted using a thematic analysis, which Boyatzis (1998) describes as an analysis that involves coding data in order to label ideas that are derived from texts (p. iv). Typically, coding involves labelling each different topic or idea on a page; this is repeated until all the data are coded. Rather than using preconceived codes, which are codes that are determined before the initial analyses of qualitative data, this research created codes as the data were examined to reduce the degree of possible biases or assumptions that can occur when preconceived codes are utilized (Boyatzis, 1998, p. iv). Themes were then created from the codes and main ideas were

taken from the transcripts and QuickLaw documents to cultivate deeper understandings around Indigenous battered women who killed their intimate abusers. The limitations and safeguards of this research will also be discussed.

4.2 Requirements for Data

A total of eight cases where Indigenous battered women killed their intimate abusers was chosen. It is important to note that there have been more than eight cases in Canada where Indigenous battered women killed their intimate abusers, however, this study focused on only eight cases for two reasons. First, I had limited time and resources to obtain data, as there was a strict due date in place, and I was paying out of pocket for the data. Second, eight cases produced enough data to perform a detailed analysis. One case can produce up to three transcripts, which can amount to approximately 20-300 pages of data per case. From each case, the trial transcript, the sentencing transcript, and/or the reasons for sentence transcript were collected. However, if court transcripts were not attainable for a specific case or the transcripts for one case were quite short in length, and yet the case appeared relevant to the study, documents from QuickLaw were also obtained as data. QuickLaw provides the public with access to cases that have been formally documented in Canada. The kinds of documents that are available on QuickLaw include summaries and analyses of cases, as well as quotes from judges.

In order to be selected, each case had to possess the following criteria:

- the accused was a Canadian-Indigenous woman (it was not required that she had been living on a reserve or practising cultural traditions);

- the accused was a battered woman (a victim of domestic violence) where there was evidence of prior abuse such as witness statements, police reports or hospital visit records;
- the accused killed her intimate partner such as a boyfriend, spouse, or common law partner, while the method of committing intimate homicide needed not be specified;
- the offense occurred between 1990 and 2020 (because BWS was first utilized in Canadian courts in 1990, so the possibility of using BWS as an explanation in court occurred after said date);
- BWS was mentioned during court proceedings (because there is a focus on the application of BWS for Indigenous battered women who killed their intimate abusers within this research study).

4.3 Collection Process

To find cases that contain all these criteria for this project, a 'snowball' method was utilized. The 'snowball' method refers to the process of finding one piece of relevant data and using its citations to find similar data. This process was repeated until eight cases that meet the study's criteria were found. To find the first case, I searched the 'QuickLaw' database and used the advanced search setting, to set the timeline to find cases between 1990 up to 2020 that contained 'Battered Women's Syndrome' as key words. From there, I read the resulting cases to identify those where the accused was an Indigenous battered woman who killed her intimate partner. The first case that matched all the necessary criteria was *R. v. Kahypeasewat [2006] S.J No. 587*. Next, the citations from *R. v. Kahypeasewat* were examined to help find similar cases. After repeating the snowball method many times, 14 cases with the necessary criteria were selected from QuickLaw. To narrow down the number of cases, the cases were sorted by province or

territory so that the provincial court transcribing services could be contacted to inquire about purchasing the case transcripts. For example, for the cases that were held in Saskatchewan, the court transcribing services for Saskatchewan were located online using the google search engine, applications from the court transcribing website were located and filled, and then there was a wait period for the transcribing services to respond to the application requests. In some instances, the courts were unable to provide transcripts of trial transcripts, sentencing transcripts, and/or reasons for sentence transcripts, for various reasons such as that the tapes could not be located, or the cases were not available to the public. As well, there were instances where the fee for transcribing and purchasing the transcripts was too high, and so it was not possible to obtain the transcript due to the student researcher's limited budget. Hence, after all the applications for transcripts were sent and responses from transcribing services were received by the researcher, a total of eight transcripts from five cases were collected for this research study. For the other three cases that were included, the full court transcripts were not attainable from court transcribing services but aspects were found on QuickLaw, as QuickLaw possesses summaries, critical analyses, sections of transcripts, reasons for decisions, and annexes that provide accurate information for many cases. For the three other cases with data generated from QuickLaw, there was sufficient information available pertaining to trial outcomes, sentencing hearings, and/or reasons for sentences to include them in the data set.

4.4 A Qualitative Thematic Analysis

According to Braun and Clarke (2006), "A thematic analysis at the latent level goes beyond the semantic content of the data, and starts to identify or examine the underlying ideas, assumptions, and conceptualizations / and ideologies / that are theorized as shaping or informing the semantic content of the data" (p. 84). Hence, a thematic analysis consists of examining and

interpreting patterns in data through coding and generating themes (Boyatzis, 1998, p. iv). The patterns in data and the themes can be established through an inductive approach, a deductive approach, or an abductive approach (Braun & Clarke, 2006, p. 83). According to Braun and Clarke (2006), "An inductive approach means the themes identified are strongly linked to the data themselves (as such, this form of thematic analysis bears some similarity to grounded theory). In this approach, the data have been collected specifically for the research" (p. 83). The researcher began the study using an inductive approach; however, the study began to eventually utilize an abductive approach instead. An abductive approach relies heavily on a theoretical framework to analyze language such as within the production and reproduction of situations (Blaikie & Priest, 2019, p. 100). This research study became theory laden because of the researcher's shifted focus of coding with the intent of weaving Indigenous Feminisms and Intersectionality into the data analysis.

To conduct a thematic analysis, there are several important steps to follow. First, the data were read over multiple times in order to ensure familiarity with the cases, transcripts, and documents. Familiarity with data is important because a general understanding of the outcomes of cases and the key points within cases helps lead to a well informed examination of the data (Merriam, 2009, p. 13). Next, the data were coded through the guidance of the theoretical framework, which includes Indigenous Feminisms and Intersectionality. Coding is a technique used to label small sections of data for the purpose of qualitative interpretation to derive meanings from texts (Merriam, 2009, p. 13). The codes were applied manually as the court transcripts and QuickLaw documents were examined. This is a process that Boyatzis (1998) refers to as 'open' coding, as codes are decided as the data are analyzed instead of preparing codes before the data are examined (p. iv). Open coding was utilized because it helps to safeguard against researcher

bias where the researcher predicts what he or she will find and therefore anticipates the data too much and falls prey to tunnel vision (Braun & Clarke, 2006, p. 83). The creation of codes is at the discretion of the researcher meaning the coding process is a subjective interpretation of the data, however, the chosen theoretical framework must be used as a guide (Braun & Clarke, 2006, p. 84). To begin the coding process, the transcripts were sorted into groups according to case, and then the coding process began on one transcript at a time. For example, the first case that was coded was the sentencing hearing transcript from *R. v. Kahypeasewat.* Since no other transcripts were acquired from the *Kahypeasewat* case, as there had not been a trial and the 'reasons for sentence' transcript was not available, the next case was selected to be coded. After all the transcripts and the QuickLaw documents were coded, these were revisited to group the codes into themes.

4.5 Case Details

Eight cases were selected for the study. First, the sentencing hearing transcript for *R. v. Kahypeasewat [2006] S. J. No 587* was selected. Marie Valerie Kahypeasewat is an Indigenous battered woman who killed her abusive common law partner, Frank Nadary, in Saskatchewan. Kahypeasewat was 44 years old at the time of the homicide and she is a mother of seven children. However, two of her children were taken from her by social services and one of her daughters was murdered by the babysitter. Kahypeasewat's mother was violently killed about six months prior to her daughter's murder. She plead guilty to manslaughter, a sentencing circle was performed, and she was ultimately given a conditional sentence of two years less a day to be carried out within the community.

Second, the sentencing transcript from *R. v. C. P. W. [2002] M. J. No 541* was chosen for the study. Cherie Pearl Wasicuna is an Indigenous battered woman who killed her common law husband, Brandon Wanbdiska, in Manitoba in Sioux Valley Dakota Nation. Wasicuna was 25

years old at the time of the homicide and she is a mother of four children. As a child, she experienced physical and sexual abuse from family members. At one point, she was taken by Child and Family Services, where she was further sexually abused. She has struggled with using alcohol since she was 15 years old. Wasicuna plead guilty to manslaughter, and she was sentenced to 30 months in prison.

Third, the sentencing hearing transcript and the reasons for sentencing transcript were selected for *R. v. Byrd [2006] M. J. No 102.* Bernice Byrd is an Indigenous battered woman who killed her abusive boyfriend, Douglas Fisher, in Manitoba. Byrd was 54 years old at the time of the homicide and she has no children. She grew up in Peguis First Nation and was raised by her grandparents since she was a baby. Byrd started drinking when she was young, and she has repeatedly struggled with alcohol and drug use as an adult. Byrd plead guilty to manslaughter, and she was ultimately given a conditional sentence of two years less a day to be served in the community.

Fourth, the trial transcript (which also included the sentencing hearing transcript) and the reasons for sentence transcript were collected for the case *R. v. Neyelle [1992] N. W. T. J. No 184.* Susan Neyelle is an Indigenous battered woman who killed her abusive husband, Ted Neyelle, in the Northwest Territories where they resided in Fort Franklin. Neyelle was 32 years old at the time of the offense and she is a mother to seven children. She had been struggling with alcoholism for years and began feeling suicidal because of the constant cycle of violence and alcohol in her life. Neyelle went to trial by jury where she plead not guilty to manslaughter of her deceased husband. However, Neyelle was ultimately found guilty of manslaughter, and she was sentenced to three years in prison.

Fifth, the reasons for sentencing hearing transcript and the sentencing hearing documents from QuickLaw were collected for the case *R. v. S. M. [2004] S. J. No 572*. Sylvia Machiskinic is an Indigenous battered woman who killed her common law partner, Ronny Ahpay, in Saskatchewan. Machiskinic was 22 years old at the time of the offense and she is a mother of two children. As a young child, Machiskinic grew up in foster care and then moved in with her aunt where her aunt's husband abused her sexually, emotionally, and physically. She began to use alcohol at a young age, and she has struggled with alcoholism as an adult. Machiskinic plead guilty to manslaughter, and she was sentenced to two and a half years in prison.

Sixth, the sentencing hearing documents from QuickLaw were collected for the case *R. v. Howard [1991] B. C. J. No 3780.* Marilyn Cathy Howard is an Indigenous battered woman who killed her abusive husband, Terry Howard, in British Columbia. Howard was 29 years old at the time of the offense and she is a mother of five children. Howard lived in a small Indigenous community called Gitsegukla where she married into the Grouse clan. Howard pled guilty to manslaughter, and she initially received a sentence of five and a half years in prison; however, she won her appeal that was based on the argument that the length of the sentence was excessive, and so her sentence was reduced to two years in prison. Additionally, BWS evidence had not been admitted during her initial sentencing hearing, and so it was introduced during her appeal.

Seventh, the sentencing hearing documents were collected through QuickLaw for the case *R. v. Quannaaluk [2018] Q. J. No 11464.* Jessie Siasi Quannaaluk is an Indigenous battered woman who killed her abusive boyfriend, Paul Brown, in Quebec. Quannaaluk was 59 years old at the time of the offense and she is a mother of three children. She grew up in a violent household where both of her parents struggled with alcohol use, and she began drinking at the age of 12. When she was seven years old, her father began sexually abusing her and later on so did her

grandfather. Quannaaluk's mother exploited her sexually, as she sold her body to men to pay for her gambling habit. Quannaaluk plead guilty to manslaughter, and she ultimately received a suspended sentence because she had spent five years and four months on remand, and because she had been a lifelong victim of severe violence.

Finally, the trial documents for *R. v. Poucette [2019] A. J. No 796* and the reasons for sentence documents for *R. v. Poucette [2019] A. J. No 1284* were collected through QuickLaw. Vanessa Poucette is an Indigenous battered woman who killed her abusive common law partner, Brennon Twoyoungmen, in Alberta. Poucette was 50 years old at the time of the offense and she is a mother to one child. She belongs to the Stoney Nakoda First Nation and resided at Morley reserve where she has strong relationships with multiple family members. Poucette has struggled with alcoholism throughout her life and has taken many steps to become sober. She went to trial and pleaded not guilty to manslaughter and instead argued self-defence. Poucette was ultimately convicted of manslaughter, and she was sentenced to two years in prison.

All of these women have suffered severe trauma in their childhoods and into their adult lives. The violence that so many Indigenous women endure is not uncommon, and yet often goes unnoticed in Canada.

4.6 Themes

According to Saldana (2013), a theme is "An extended phrase or sentence that identifies what a unit of data is about and/or what it means" (p. 175). Hence, a theme should represent an overarching idea that can sum up a group of codes to better represent the data as a whole. From each case, a couple of main themes were produced. Next, I compared the cases and their corresponding themes to produce four overarching themes that best represent all the cases as a group. Each theme has corresponding sub-themes.

The four themes that emerged from the analysis are:

- The Prevalence of Substance Abuse and Cyclical Violence Among Indigenous Battered Women Who Kill;
- Indigenous Socio-Cultural Differences in Communication and Community;
- Indigenous Legal Differences in Counselling and Sentencing Practices;
- Stereotypes of Battered Women and Patriarchal Undertones of BWS.

Limitations and Safeguards

4.7 Quality of Research: Credibility, Dependability, and Transferability

To examine the quality of qualitative research, Walby (2015) suggests using credibility, dependability, and transferability factors as a guide rather than traditional quantitative factors such as validity, reliability, and generalizability (p. 399). First, credibility within qualitative research studies refers to the level of truth behind the research, which relates to the quality of the researcher's interpretation of the data (Cope, 2014, p. 89). Cope (2014) suggests that the researcher should show how they demonstrated engagement to ensure a credible interpretation of the data (p. 89). Moreover, audit trails can be used to help ensure a high degree of credibility. Audit trails refer to the countless notes and documents that researchers keep to help them form detailed interpretations of data (Cope, 2014, p. 90). As such, I attempted to show engagement with the data by using reflexivity and taking an appropriate amount of time to consider the best type of method to obtain data and to be able to answer the research questions. As well, I used audit trails in the form of detailed notes in order to help me interpret the data in a credible manner.

Second, dependability in qualitative research refers to how consistent the research conclusions would be if the research was performed within another environment (Cope, 2014, p.

89). Dependability does not necessarily equate to replicability, as the latter pertains to the replication of the same study over and over to achieve similar results, while the former emphasizes similarity of results in different settings. To help ensure dependability, Cope (2014) suggests sharing decisions at each stage of a research study with another researcher to get professional advice (p. 89). To accomplish this, I frequently consulted with both my thesis supervisor and a peer who was performing similar research to acquire relevant feedback.

Third, within qualitative research studies, transferability refers to how the findings of a study would be relevant in other environments or settings (Cope, 2014, p. 89). Cope (2014) explains that the transferability of research findings can be assessed based on how transferable the research data is to similar groups and circumstances (p. 89). For instance, I considered if this research study would be relevant to all battered women who killed, rather than only Indigenous battered women who killed.

It is important to note the reasons why I opted out of using validity, reliability, and generalizability to assess the quality of research for this study. Validity, reliability, and generalizability are quantitative concepts that have roots in positivism (Walby, 2015, p. 399). Since this research is qualitative and feminist, I rejected the use of traditional quantitative methods of assessment in order to prioritize qualitative mechanisms for assessing research quality. I value qualitative research and thus focused on qualitative forms of assessing quality. Furthermore, validity and reliability, as positivist tools, are based in science and objectivity, and so they have little relevance in a descriptive study that emphasizes producing interpretive and theoretical meaning as its core objective (Kirk & Miller, 1986, p. 3). Moreover, I reject the notion of generalizability because the data are not meant to be generalizable to a large population (Morse, 1999, p. 5). Rather, a qualitative research study about Indigenous battered women who killed

should not be generalizable to a large population because these women represent a group with a unique multiplicity of intersecting oppressions. Hence, it is stressed that even the small sample of Indigenous battered women's cases that were used for this research is not homogeneous; each individual Indigenous battered woman's case is different, and so generalizability is not warranted.

4.8 Subjectivity and Researcher Bias

As a qualitative research study, much of the coding and analysis is subjective to the researcher, which means that researcher interpretations can sometimes be biased or prejudiced (Hesse-Biber, 2011, p. 3). Unlike quantitative research that focuses on numbers and statistics, qualitative research is based on interpretive analyses of data such as dialogues, art, and narratives (Merriam, 2009, p. xii). As such, there is often a greater risk for qualitative research interpretations to be biased in favour of what the researcher believes or expects to find. In order to attempt to safeguard against falling victim to personal biases or preconceived assumptions, a practice called 'reflexivity' was performed, which is a feminist exercise that focuses on the researcher's position compared to the research subject's position (Hesse-Biber, 2011, p. 3). A researcher should reflect on their own values and beliefs in order to predict how they could impact their research in terms of how a researcher's interpretation of data could be affected later (Alvesson, 1996, p. 468). According to Alvesson (1996), reflexivity should help to deepen a researcher's level of self-awareness, and in turn, lead to a strong interpretation within a study (p. 468). As such, to use reflexivity successfully, a researcher must go beyond mere reflection and also act in a way that shows self-awareness (Bondi, 2009, p. 329). For instance, I was aware that my experience with domestic violence might have made me biased in favour of better treatment for battered women in the criminal justice system, however, by recognizing this potential issue before beginning my research, I was able to help anticipate and prevent biased research. Additionally, I acted in a

reflexive manner by going back and re-reading my chapters to specifically examine if my writing appeared biased, and I would edit accordingly.

4.9 The Researcher's Position of Power

This research focuses on a very vulnerable population, criminalized Indigenous battered women, which means that I, who is neither Indigenous nor criminalized, is in a position of power. In qualitative feminist research, ethics are always in place to guide feminist research in a way that protects and benefits the research participants (Hesse-Biber, 2011, p. 74). According to Hesse-Biber (2011), ethics help to uphold morals within feminist research projects (p. 74). As such, the researcher took steps to maintain an ethical approach by performing reflexivity and thus analyzing the power dynamic between herself and her research about Indigenous battered women. Tuck (2009) warns that research about Indigenous peoples by non-Indigenous researchers can sometimes objectify Indigeneity and depict Indigenous individuals as broken and in need of 'healing' (p. 412). This depiction of Indigenous peoples is problematic because it reinforces colonialism in western research; it positions non-Indigenous researchers as superior while Indigenous peoples are forced to be subjects for the benefit of academics who describe Indigeneity within a 'pain narrative' (Tuck, 2009, p. 413).

Tuck (2009) describes a 'pain narrative' as a representation of Indigeneity as subordinate and riddled with great suffering, whereby Indigenous people's hardships are ultimately exploited and pathologized for the benefit of white researchers so that they can publish work (p. 413). In order to resist falling into a position of white supremacy that illustrates Indigeneity as 'damaged', I constantly exercised reflexivity so as to recognize the strength and resilience of Indigenous peoples. For instance, I drew on Kovach (2005) who emphasizes the importance of acknowledging Indigenous ways of knowing as legitimate rather than subordinate to western epistemology (p. 9).

Kovach (2005) states that researchers must respect Indigenous epistemologies, such as storytelling and personal experiences, as concrete ways of accumulating knowledge in order to refrain from adopting colonial perspectives that are often reinforced in western academia (Kovach, 2005, p. 10). Hence, Indigenous Feminisms guided this researcher to respect and acknowledge Indigenous ways of knowing and to avoid falling prey to colonial perspectives about research.

There were three primary steps that I took to practice reflexivity during my research study. First, before beginning my research, I wrote down all the uncomfortable feelings and inner struggles that I was having while considering doing research about Indigenous battered woman as a white woman researcher. I made a list of the following things:

- I benefit from stolen Indigenous land as a white Canadian student at uOttawa, and so I am a by-product of settler-colonialism;
- I have a lot of power as a white woman researcher, which means I could appear as though I am trying to be a 'mouthpiece' for Indigenous communities;
- There is a danger of producing 'damaged centred research', which Tuck (2009) refers to as when white researchers depict Indigenous peoples as broken and in need of healing;
- I could appear to write from a perspective rooted in pluralistic ignorance, which Razack (1998) refers to as when white people think they know what is best for racialized people.

Wanda Pillow (2003) coined this practice 'uncomfortable reflexivity' because although it arouses discomfort it also, "interrogates reflexivity's complicit relationship with ethnocentric power and knowledge in qualitative research" (p. 192). Hence, I was genuinely concerned that despite my good intensions, my research could appear exploitive of Indigenous women because of the difference in power between white people and Indigenous peoples. However, despite these

inner struggles, I ultimately decided to conduct this research because there exists a gap in literature about Canadian-Indigenous battered women who killed their abusers, and how intergenerational trauma, Indigeneity and BWS affect these women. Therefore, I believed that this research project was an important and vital addition to research about Indigenous women in Canada.

The second step in my practice of reflexivity was writing down my personal values and beliefs that could impact my research. On a sticky note, I wrote down the following: I value diversity, I respect Indigenous peoples and I know I can never understand first-hand what it means to be Indigenous in Canada, and I believe that everyone deserves protection from the criminal justice system. Next, on another sticky note I wrote down my goal for my research: to shed light on the experiences of Canadian-Indigenous battered women, how criminal justice actors respond/treat these women, and how BWS is used in court for these women.

The third step that I took to practice reflexivity was that every time I finished writing a chapter, I went back to my sticky notes (that were stuck to my desk so I could always see them) about my inner struggles, values, and goals, and I compared them to my chapter. I did this repeatedly so that I could edit accordingly if I thought it sounded like I was deviating from my goals or if my writing appeared in any way culturally insensitive. Therefore, I tried my best to be self-aware and sensitive to the power dynamic between myself and Indigenous battered women.

It is important to note that reflexivity possesses limitations when performed as a feminist research practice. First, Bondi (2009) discusses how researchers can sometimes become 'self-indulgent' or focus too much 'inward', which ultimately makes the research about the researcher and loses sight of research goals (p. 328). Reflexivity, when performed self-indulgently, can cause the researcher to overlook important phenomena because the focus is mostly on the self. Second, Rose (1997) explains that a problem with reflexivity is that it assumes feminist researchers have

'transparent insight', which implies that researchers are all-seeing beings (p. 311). This assumption is unrealistic, and it should be acknowledged that while researchers should attempt to be self-aware, it is impossible for this to happen completely. Finally, Speer (2002) expresses that many feminist researchers focus heavily on theory, and so oftentimes researchers simply reflect instead of reflecting *and* acting simultaneously (p. 799). As such, feminist researchers may sometimes claim to practice reflexivity, however, they fail to take any real steps or measures to ensure that their research is in fact reflexive. Nevertheless, many feminist scholars agree that some degree of reflexivity is important within feminist research since feminist studies often focus on vulnerable or marginalized groups, and so it is not uncommon for complicated power dynamics between researchers and research subjects to exist.

4.10 Insider-Outsider Status

It is important to examine the 'insider-outsider' position of a researcher and how this impacts research studies. On one hand, the 'outsider' status refers to instances where the researcher does not belong to the same community or share the same culture, race, gender, lifestyle, or experiences as the research participants or the subjects of the research data (Islam, 2000, p. 43). Hence, the researcher is an outsider looking in. On the other hand, the 'insider' status is given to researchers who, according to the academy, *appear* to belong to the same type of community as the subjects of their research. For example, Indigenous women whose research focuses on Indigenous peoples would likely be considered insiders because the researcher shares an Indigenous cultural background with the research participants and can relate to colonial oppression. However, Islam (2000) warns that although some researchers may appear to be insiders in the opinion of the academy, this is not always the case (p. 35). For instance, Islam (2000) is a Bangladeshi-American researcher who researches the Bangladeshi immigrant

community that resides in Los Angeles (p. 35). While Islam appears to fit in culturally and racially with her participants, in reality, she is not accepted by her community because of her personal values and choice of career as a Bangladeshi woman (Islam, 2000, p. 44). Therefore, the status of a researcher is oftentimes more complex than meets the eye.

As a white woman researcher analyzing transcripts and documents from cases of Indigenous battered women who killed their abusers, I am an 'outsider' who is not of Indigenous descent. As an 'outsider', I recognize that I cannot understand these women's experiences of colonial suffering and intergenerational trauma; however, I do have experience with domestic violence, and may be considered an 'insider' in this way. Nevertheless, I recognize that I am ultimately an outsider because I have never experienced the overlapping factors of oppressions that impact Indigenous women who are victimized by their intimate partners.

4.11 The Importance of Qualitative Research

Despite the limitations concerning qualitative research designs, qualitative research is extremely valuable within academia. First, qualitative research is flexible, as it does not have the same sort of restrictive limits that come along with quantitative research (Flick, 2007, p. 6). For instance, much quantitative research takes place in the natural sciences rather than the social sciences, and so quantitative research studies are often dictated by strict rules and generic standardization guidelines that limit the scope of the studies; while qualitative research studies are more flexible in their methods to obtain and produce new knowledge. Second, qualitative research holds great value because it allows the researcher to participate and actively engage in the research study, which positions the researcher as a human being instead of an objective, neutral party (Hesse-Biber, 2014, p. 18). As such, I can be subjective and can explore sensitive or personal research topics that hold great meaning to me. Finally, qualitative research studies, especially

qualitative feminist studies, are important because they allow for the exploration of topics that focus on marginalized groups (Hesse-Biber, 2014, p. 21). For example, research in the quantitative scientific field has historically focused on men and has excluded women and minorities. However, qualitative studies that are rooted in Feminism focus on traditionally excluded groups, such as women and racialized Indigenous peoples, in order to gain knowledge for the purpose of promoting social change. Therefore, qualitative research is vital for the production of knowledge that is flexible, subjective, and inclusive of marginalized groups, which quantitative research studies are less likely to produce.

4.12 Conclusion

Overall, by using a snowball method, data was collected for eight Canadian court cases regarding Indigenous battered women killed their intimate abusers. Next, a qualitative thematic analysis was conducted through the examination of both court transcripts and additional documents gathered from QuickLaw. A theoretical framework composed of Indigenous Feminisms and Intersectionality was used to guide this research study. The transcripts and documents were examined and ultimately identified four overarching themes. While there were challenges in conducting this research (such as how to measure the quality of the research, and most notably the subjectivity inherent in this study including the potential vulnerability to researcher biases, the researcher's position of power, and the researcher's 'outsider' status) these were acknowledged before the examination of data and reflexivity was used throughout the process in order to help ensure that the final results and conclusions drawn are useful in promoting positive legal changes for Indigenous battered women.

Chapter 5: Data Analysis

5.1 Introduction

This chapter examines the themes that have emerged following a thematic analysis of the qualitative data. Thematic analyses involve coding data to label ideas that are derived from texts (Boyatzis, 1998, p. iv). After creating and labelling each transcript and other documents from QuickLaw with codes, the codes were grouped into themes, which were reviewed, compared, and eventually organized to create four main themes. Each theme corresponds to one of the four guiding research questions. The theoretical framework, consisting of Indigenous Feminisms and Intersectionality, was used to examine each theme.

The following are the four research questions and the four corresponding themes:

- **Research question #1:** How has colonial intergenerational trauma affected the lived experiences of Canadian-Indigenous battered women who killed their intimate abusers?
- **Theme #1:** The Prevalence of Substance Abuse and Cyclical Violence among Indigenous Battered Women Who Kill.
- **Research question #2:** What unique socio-cultural differences associated with Indigeneity exist among Canadian-Indigenous battered women who killed?
- **Theme#2:** Indigenous Socio-Cultural Differences in Communication and Community.
- **Research question #3:** What legal differences associated with Indigeneity exist among Canadian-Indigenous battered women who killed?
- **Theme #3:** Indigenous Differences in Counselling and Sentencing Practices.
- **Research question #4:** Do criminal justice actors use BWS to devalue the experiences of Canadian-Indigenous battered women who killed their intimate abusers? If so, how?
- **Theme #4:** Stereotypes of Battered Women and the Patriarchal Undertones of BWS.

5.2 Theme #1: The Prevalence of Substance Abuse and Cyclical Violence Among Indigenous Battered Women Who Killed

The research question that corresponds to the first theme is: How has colonial intergenerational trauma affected the lived experiences of Canadian-Indigenous battered women who killed their intimate abusers? Original trauma refers to the severe number of hardships inflicted onto Indigenous communities, which can be traced back to colonization when white settlers stole Indigenous people's lands and worked violently to assimilate Indigenous cultures (Sokoloff & Dupont, 2005, p. 44). Furthermore, violent events such as the enforcement of residential schools, the sixties scoop, and ongoing systemic discrimination contribute to the sufferings of Indigenous peoples. The trauma is intergenerational because it effects multiple generations of Indigenous peoples and is reflected in hardships such as high rates of substance abuse, mental illness, homelessness, suicide, and domestic violence (Million, 2013, p. 5). There are two sub-themes associated with this theme: The Prevalence of Alcoholism, and The Prevalence of Familial and Intimate Violence.

5.3 Sub-Theme #1: The Prevalence of Alcoholism

Often beginning during adolescence, many Indigenous peoples suffer from the effects of intergenerational trauma and sometimes begin using alcohol or drugs as coping mechanisms. For instance, Bernice Byrd, an Indigenous battered woman who killed her abusive common-law spouse, struggled with alcohol since a young age. As her defence lawyer explained:

> She had left her grandparents residence and began to consume alcohol as a result of peer pressure, and that's really where her downfall is. She indicates that she is a binge drinker and that's apparently borne out of the collaterals who have confirmed that information. She also indicated in the report that as a result of the relationship that she had with the deceased, she was consuming alcohol when she had previously gone through programming and stopped drinking. So this was a recipe for disaster and

> clearly the indication would be that either one of these individuals would have died as a result of this relationship (*R. v. Byrd*, sentencing hearing, 2006, p. 7, lines 20-31).

The defence counsel claimed that Byrd's substance abuse problem, which began because of peer pressure, mixed with the fact that she later became a victim of domestic violence, ultimately led her to kill her abuser.

Comparably, defence counsel for Quannaaluk, who also killed her abusive partner and began using alcohol at a young age along with her brothers and sisters explained, "Ms. Quannaaluk was born in 1959 in a sealskin tent. She is the second eldest child of seven siblings. Always, her parents abused alcohol and fought with each other. She herself began abusing alcohol at the age of 12. All her siblings are beset with alcohol abuse problems" (*R. v. Quannaaluk*, 2018, p. 6 line 45). Intergenerationally, Quannaaluk and her siblings, having witnessed violence between their parents, began using alcohol to cope.

Alcohol is often involved in cases where Indigenous battered women killed their abusers. It is not uncommon for both parties, the victim and the accused, to have consumed alcohol during the night of the homicide. Susan Neyelle, an Indigenous battered woman who killed her abusive spouse, suffered from alcoholism, which played a primary role in the intimate homicide as the judge explained,

> I have been told that there is a history of alcohol abuse and violence in the family home. Apparently there were incidents of assault by Ted Neyelle against his wife. He was convicted of those assaults on a number of occasions. It seems to me very obvious that if these two people did not have a problem as they did with alcohol abuse, Ted Neyelle would be alive today (*R. v. Neyelle*, reasons for sentence, 1992, p. 5, lines 13-20).

Justice J. Z. Vertes discussed the severity of violence experienced by Neyelle that was intensified by the consumption of alcohol, thus demonstrating how the effects of intergenerational trauma (i.

e., domestic violence and substance abuse) led to intimate partner homicide by an Indigenous battered woman.

In a similar fashion, during Marilyn Howard's appeal hearing, Justice Hollinrake explained the prevalence of alcohol in cases where Indigenous battered women kill their abusers,

> Alcohol, I think, plays some part in this matter. Both parties had been drinking. They had been to a wedding dance the evening before. The evidence would indicate that the deceased was drunk at the time of the quarrel and that the accused was slightly impaired. Alcohol, though, I think, does not play the part that it does in so many of these cases (*R. v. Howard,* 1991, p. 8, line 3).

The judge indicates that alcohol is often involved in cases where Indigenous battered women killed their abusers, which is arguably due largely to the high prevalence of substance abuse among Indigenous communities, but he did not find for it in this case. Although Howard's case involves less alcohol than other cases of intimate homicides among Indigenous peoples, Justice Hollinrake alludes to the notion that, "so many of *these cases"* (likely referring to Canadian-Indigenous intimate homicides) are fueled by alcoholism; largely a result of intergenerational trauma (*R. v. Howard,* 1991, p. 8, line 3).

Furthermore, the revictimization of Indigenous women by the criminal justice system can occur when alcohol is considered an aggravating factor in cases where Indigenous battered women killed their abusers. When alcohol is involved in a homicide, it is often labelled as a serious factor in determining sentences, however, since Indigenous peoples suffer from the prevalence of substance abuse due largely to intergenerational trauma from colonial violence, they are disproportionately affected by substance abuse issues. In this way, it can be argued that Indigenous battered women who killed their abusers are more harshly sentenced because alcohol is often a primary aggravating factor in these intimate homicides. For instance, Kahypeasewat's sentence

relied heavily on the fact that she was intoxicated when she killed her abusive spouse as the judge explained, "I took into account all of the aggravating factors as -as Valerie Kahypeasewat's prior record, the fact that her son and daughter were in the apartment at the time of the offence, her consumption of alcohol, and the fact that the victim was a spouse" (*R. v. Kahypeasewat, 2006,* p. 192, lines13-19). Two of the three aggravating factors in Kahypeasewat's case are linked to intergenerational trauma since both alcohol and domestic violence (that led to intimate homicide) are prevalent issues within Indigenous communities. As such, it can be argued that the criminal justice system is an extension of colonialism since it considers alcohol an aggravating factor; whereas alcohol is often a coping mechanism for Indigenous peoples who are suffering from state-induced trauma. Indigenous battered women are thus judged for the circumstances that were enforced onto them through colonial practices (Million, 2013, p. 41).

For another example, Sylvia Machiskinic, who killed her abusive common-law spouse while intoxicated, struggled with alcoholism throughout her life to cope with domestic abuse and continued to drink during pregnancy. As Justice Scheibel stated:

> The accused has used drugs and consumed alcohol for many years. However, while electronically monitored, the accused passed all drugs screening tests that were asked of her. She finds it difficult to attend Alcoholics Anonymous, but she says her peer group has changed, and it is contributing to her soberness. That said, a substance abuse disorder is suspected and the author of the pre-sentence report was told by a reliable source that the accused continues to drink while pregnant (*R. v. S.M,* reasons for sentence, 2004, p. 3, line 14).

Therefore, in his sentencing decision, Justice Scheibel described Machiskinic's substance abuse problem as a factor in her sentencing and ultimately sentenced her to two and a half years in prison. Alcohol was considered an aggravating factor in the sentencing decision, and so the criminal justice system arguably revictimizes Indigenous peoples for using harmful coping mechanisms, like alcohol, by considering this an aggravating rather than a mitigating factor in sentencing, which

has contributed to the over-representation of Indigenous peoples in prison. Moreover, the fact that Justice Scheibel mentioned Machiskinic's potential drinking during pregnancy demonstrates what Razack (1998) refers to as medicalizing and pathologizing Indigenous bodies by way of blaming them for their substance abuse problems to escape colonial blame (p. 366). By criminalizing the use of alcohol while pregnant, the criminal justice system simultaneously criminalizes a disproportionate number of Indigenous women because Indigenous peoples suffer high substance abuse difficulties (Razack, 1998, p. 901). Million (2013) states that Indigenous women are the most surveilled and over-policed population in Canada, which contributes to their vast over-representation in Canadian prisons (p. 40). The Canadian criminal justice system itself revictimizes Indigenous battered women who killed their abusers by considering alcohol an aggravating factor in sentencing despite the prevalence of substance abuse among Indigenous communities being a result of state-induced colonial violence.

5.4 Sub-Theme #2: The Prevalence of Familial and Intimate Violence

The term 'cycle of familial violence' refers to mental and physical violence that occurs intergenerationally within families and the term 'cycle of intimate violence' refers to instances where two or more of an individual's intimate relationships involved domestic violence. According to Sokoloff and Dupont (2005), domestic violence is not experienced universally among women, but when analyzed intersectionally, domestic violence affects more women belonging to racialized and Indigenous groups who belong to lower economic backgrounds (p. 44). Moreover, studies indicate that the most severe or potentially fatal forms of domestic violence disproportionally affect racialized minority women who often belong to low socio-economic groups (Sokoloff & Dupont, 2005, p. 44). In this way, by examining Indigenous battered women who killed their intimate abusers through an intersectional lens, individual factors such as gender, race, and

economic status impact their experiences of domestic violence. The prevalence of familial and intimate cycles of violence among the Canadian-Indigenous population is largely a result of intergenerational trauma stemming from colonization, residential schools, the sixties scoop and ongoing systemic racism towards Indigenous peoples by the West. For example, Quannaaluk suffered a severe history of familial violence as explained by Justice Marc David,

> Ms. Quannaaluk is a lifelong victim of physical and mental abuse, incestuous sexual abuse, rape, and human trafficking for the purpose of sexual exploitation. As a result, she was recently diagnosed as suffering from post-traumatic stress syndrome. As with many of her siblings, she was sexually abused by her father from the ages of 7 to 15 years old. The sexual abuse included intercourse. The same occurred with her maternal grandfather for 2 years, which began when she was 8 years old. Her parents pimped her in this regard, as the mother needed money to sustain her gambling activities (*R. v. Quannaaluk,* 2018, p. 6, lines 48-50).

Quannaaluk suffered extensive abuse from her parents and grandparent, which is a clear intergenerational cycle of familial violence. Quannaaluk's family struggled financially and ultimately sold Quannaaluk for sexual purposes to men, which shows interlocking oppressive factors relating to gender, race, and economic status. Moreover, Quannaaluk, having grown up in a violent home littered with physical and sexual abuse, continued this cycle of violence by engaging with intimate partners who were also violent to her as this appeared natural to her. Justice Marc David explains Quannaaluk's cycle of intimate partner violence,

> Except for one spouse that she frequented in 2006, all have been physically and mentally abusive towards her. The author of the psychological assessment, Dr. Stephenson, explained during his viva voce evidence that repetitive abuse in all Ms. Quannaaluk's close relationships was the norm, as this was the only reality that she has known throughout her life. Her 5 years relationship with the victim, Paul Brown, fitted within this cycle of abuse (*R. v. Quannaaluk,* 2018, p. 6, lines 54-55).

Therefore, growing up in a broken home, Quannaaluk endured familial violence (in physical, sexual, and emotional forms) and later, intimate partner violence in a cyclical nature.

This degree of violence inflicted upon Indigenous women is not uncommon. Similarly, Cheryl Pearl Wasicuna's violent childhood is explained by Justice Tarwid,

> Ms. Wasicuna's earliest memories were marred by numerous instances of violence between her parents. For example, there was an incident of her mother beating her sister with a board because she was trying to protect the rest of the children from family violence. She also recalled numerous instances of sexual abuse, both in her home and while she was placed with Child and Family Services. There was continual family breakdown that was ongoing during her childhood (*R. v. C.P.W.*, 2002, p. 3, lines 22-30).

Wasicuna thus experienced a great deal of abuse during her childhood and was eventually taken by state officials, which made her vulnerable to further abuse. Indigenous peoples, like Wasicuna, can suffer from the actions of the state, which arguably operates from a white colonial perspective that targets racialized minorities. Wasicuna, having been subjected to much abuse from a young age, continued the cycle of violence within her intimate relationships, as Justice Tarwid explains:

> Ms. Wasicuna had been in a long-term relationship with the deceased, Eugene Wanbdiska. Prior to meeting him, she had given birth to a child, Samantha, when she was 16. The father of this child, Vince Williams, was also in her life for a while until the relationship ended when he was sent to jail for a violent incident. She disclosed that during this relationship with Vincent, she feared for her safety (*R. v. C.P.W.*, 2002, p. 4, lines 1-4).

Wasicuna was victimized as a child by her family and Child and Family Services officials, and so she continued this cycle of violence with intimate partners. These cases illustrate that Indigenous battered women who kill their abusers can sometimes suffer from the effects of intergenerational trauma demonstrated by the prevalence of substance abuse and cycles of violence amongst both family members and intimate partners.

5.5 Theme #2: Indigenous Socio-Cultural Differences in Communication and Community

The second theme corresponds to the second research question, which is: What unique socio-cultural differences associated with Indigeneity exist among Canadian-Indigenous battered women who killed their intimate abusers? Indigenous ways of living and Indigenous ways of

knowing differ greatly from western norms and ideologies. As such, differences associated with Indigeneity are evident when in contact with the Canadian criminal justice system. There are three sub-themes for this theme: Indigenous Differences in Language, Indigenous Differences in Showing Emotions, and Indigenous Differences in Community Living.

5.6 Sub-Theme #1: Indigenous Differences in Language

Native Indigenous languages cannot always be directly translated into English, especially if certain phrases are unique to Indigenous communities and thus hold less meaning or different meaning in western environments. For instance, in *R. v. Kahypeasewat (2006)* when communicating with criminal justice actors after committing intimate homicide, Kahypeasewat described her experience with the deceased concerning his repeated sexual advancements towards her. The prosecution summarized Kahypeasewat's words as the following,

> She used the word, I think it was *bothering me* or *bugging me*…and the officer goes back to it quite fairly to try to give her an opportunity to explain exactly what was going on prior to this, and she makes the comment that *he was always wanting to have sex with me*, or something to the effect…what she reiterates over and over again is that he didn't want to let her sleep and whether she believed that meant he was going to be persistent in a sexual overture that she wasn't interested in or not isn't particularly clear (*R. v. Kahypeasewat*, 2006, p. 127, lines 3-18). [emphasis added]

It would seem that this displays the prosecution's lack of cultural training regarding Indigenous differences in language because he fails to understand that the terms 'bugging' and 'bothering' possess a sexual undertone in some Indigenous communities and appear to describe unwanted sexual advances or touching. The defence counsel explains Kahypeasewat's specific choice of language regarding the terms 'bugging' and 'bothering':

> She was remorseful, and I think in terms of her not-or her wanting to sleep, Frank was bothering her and he was *bothering her sexually* and I think your Honour can appreciate the fact that you've had, you know, numerous trials and sentencing submissions in front of you, I'm sure in the North and

> especially with Aboriginal people, this-this term *'bothering'* and I don't have an expert but-[emphasis added]

The judge interrupts:

> I did pick up on it because it was my experience I did spend my first 3 years on the Bench in the North…that-*that term 'bother' was not just about kind of an irritation-it had other meaning*-and I concluded that in the circle about-there was enough said that it was clear about what she was talking about (*R. v. Kahypeasewat*, 2006, p. 151, lines 18-26 & p. 152, lines1-15). [emphasis added]

Hence, certain terms such 'bugging' and 'bothering' appear to carry different meanings in certain Indigenous communities, which can sometimes be overlooked by criminal justice actors such as the prosecution in Kahypeasewat's case. This is problematic because it demonstrates that criminal justice actors do not undergo sufficient cultural training concerning Indigenous peoples. By continuing the historical ignorance of Indigenous values and practices, the criminal justice system continues to operate in a colonial nature. Monture-Angus (1998) explains that the criminal justice system has a colonial foundation, as it has always denied socio-cultural differences regarding Indigeneity and forces Indigenous peoples to be judged by a structure that has routinely inflicted violence upon them (p. 2). In this way, when criminal justice actors ignore, deny, or overlook Indigenous differences in language, whether they are doing this consciously or not, it reinforces the subordination of Indigenous peoples within the criminal justice system.

Additionally, it is not uncommon for the criminal justice system and its actors to utilize a colonial perspective of Indigenous peoples to undermine their testimonies by criticizing their abilities to speak English. In *R. v. Poucette (2019, No. 796)*, the credibility of Clement Poucette, the cousin of Vanessa Poucette, an Indigenous battered woman who killed her abusive spouse, was questioned solely on the basis that he did not use English pronouns correctly when describing what

he had witnessed (p. 13). The trial judge explained how a constable perceived Mr. Poucette while taking his witness statement,

> While Cst. Lambert had never previously met Mr. Poucette, he characterized the statement as an average statement from someone from Morely Reserve, and that it is not uncommon for there to be confusion between the pronouns 'he' and 'she' when taking statements from local residents. In cross examination, Cst. Lambert agreed Mr. Poucette was not a sophisticated person, but that any challenges that he faced during the interview with Mr. Poucette *were a result of a lack of sophistication*, not a mental health issue (*R. v. Poucette,* 2019, No. 796, p. 13, line 84). [emphasis added]

This demonstrates that at one point, Mr. Poucette's credibility may have been doubted because he did not speak perfect English, which is understandable given that Slavey was his primary language, as he grew up in a small Indigenous reserve. Constable Lambert later concluded that the confusion of pronouns was due to a 'lack of sophistication', which appears to be code for unintelligent or uneducated; a racist assumption, as the ability to speak English is a western practice (*R. v. Poucette, 2019, No 796, p. 13)*. Constable Lambert implied that western, English speaking people are sophisticated while Indigenous, non-English speaking peoples are unsophisticated; this reinforces the binary of western dominance and Indigenous inferiority within the criminal justice system.

5.7 Sub-Theme #2: Indigenous Differences in Showing Emotions

Indigenous practices, values and attitudes differ from Western ones, and so they are sometimes misunderstood within the criminal justice system. Razack (1998) explains how Indigenous peoples, when appearing in court, can sometimes be misunderstood because of their differences in body language or emotional reactions (p. 895). For example, Indigenous peoples often avoid eye contact with criminal justice officials to show their respect, however, from a western point of view, this lack of eye contact may be construed as a sign of guilt (Razack, 1998, p. 895). According to Rossmanith (2015) judges rely heavily upon 'affect' to evaluate a person's

degree of remorsefulness (p. 171). 'Affect' is defined as a feeling or an emotional response to something or someone (Rossmanith, 2015, p. 171). This is problematic because there exists no universal way that judges assess remorsefulness since it is an emotion that is evaluated through affect. Moreover, judges each utilize their own cultural and emotional lenses to assess remorsefulness, which means that defendants' cultural differences may go overlooked or they may even appear unremorseful (even if they are remorseful) (Bandes, 2015, p. 15). For example, Kahypeasewat said that she was immediately remorseful after killing her abusive partner, however, she did not show this remorse during her sentencing circle in an overly emotional fashion such as by crying or by eagerly participating verbally. As such, the judge questioned her true degree of remorse, for which the defence counsel argued,

> Valerie's going to live with that for the rest of her life and she's well aware of that, she talks about that. So she, you know, there's a lot of remorse and you know, all of that-all of those emotions, I think, are at the forefront of her mind. Sometimes I think she has a little bit of difficulty showing it (*R. v. Kahypeasewat,* 2006, p. 173, lines 2-7).

The judge replied:

> I'm not saying there is one right way of doing it by any means because that is not correct, people respond differently, but-to all these circumstances, but I just noted that-I just felt that she was, for whatever self preservation or protection of herself, not-not opening up very easily to-to the process (R. v. *Kahypeasewat, 2006,* p. 173, lines 8-19).

This demonstrates that the judge called into question Kahypeasewat's remorse for killing her abuser because she did not appear outwardly emotional and did not verbally participate much during the sentencing circle. However, the judge fails to recognize that racial and cultural differences, such as those relating to Indigeneity, can alter the ways in which individuals show remorse (Bandes, 2015, p. 15). Additionally, Sarnyai, Berger, and Jawan (2015) explain that Indigenous individuals who have had adverse experiences during childhood and who experienced

heightened amounts of stress as children are more likely to be affected by stress hormones in adulthood, which can affect their physical and mental health (p.73). In this way, since Indigenous peoples suffer from the affects of settler-colonialism and intergenerational trauma during childhood and into adulthood, this plays a role in the way in which they emote in high stress situations such as how they act in court and during legal practices. Therefore, the degree of remorsefulness of Indigenous battered women who kill should not be judged based on western ideas of how to 'properly' demonstrate remorse because this is not a universal practice. Moreover, by failing to recognize how trauma and stress effect Indigenous peoples and how they emote, it is likely that criminal justice actors will misinterpret Indigenous peoples who may be truly remorseful. When criminal justice actors, such as judges, deny the existence of Indigenous cultural differences, this reinforces colonialism within the criminal justice system.

Similarly, Poucette's remorsefulness for killing her abusive partner was doubted by officials because she remained calm while speaking to an emergency response operator (*R. v. Poucette, 2019, No 796, p. 3).* Even though Poucette showed immediate remorse for her actions by calling for help and applying pressure to her abuser's wound, the nature of her voice was called into questioned by an emergency response operator,

> She reported that her common law husband, Twoyoungmen had been stabbed during the course of a domestic dispute at the home they shared with the accused's cousin, Clement Shawn Poucette, on the Morely First Nation, west of Calgary, Alberta. The call was approximately 45 minutes and during the call *the voice of the accused is calm and measured. There is no sense of panic or upset. The tone of voice is very matter-of-fact* (*R. v. Poucette,* 2019, No. 796, p. 3, line 11). [emphasis added]

By 'failing' to sound overly emotional on the phone with emergency response, Poucette's degree of remorse was questioned because she had not *performed remorse properly* in terms of her demeanor. Proeve & Tudor (2010) explain that remorse is judged using three non-exclusive

categories: verbal expressions, actions, and demeanor (p. 95). Poucette's demeanor, which includes one's tone of voice and crying, was met with suspicion because she did not 'properly' demonstrate remorse by sounding in distress and sobbing. As well, the trial judge noted a paramedic's statement, "Rozema testified that the accused appeared very calm-'overly calm for the situation'-during his interactions with her at the scene" (R. *v. Poucette,* 2019, No 796, p. 4, line 14). The paramedic therefore questioned Poucette's degree of remorsefulness because of her demeanor, however, Poucette's actions showed remorse, as she had immediately called 9-11 and stayed with her wounded abuser until the paramedics arrived. Proeve & Tudor (2010) explain that actions that demonstrate remorse are better indicators of true remorse than are verbal expressions and demeanors (p. 96). In this instance, an Indigenous battered woman did not 'properly' perform remorse in the same way as a non-Indigenous woman is expected to, however, to assume that all Indigenous peoples should express emotion by ways of western norms, reinforces dominant power dynamics that continue to force Indigenous peoples into the margins of society.

5.8 Sub-Theme #3: Indigenous Differences in Community Living

Typical western living often involves a large degree of anonymity, as many people live in big cities where they are not familiar with everyone in their communities. However, some Indigenous peoples live in smaller, tight-knit communities such as in clans on reserves where it is common for many members to be acquainted. When serious crimes are committed within these small Indigenous communities, oftentimes there exists either community sympathy for the accused or, in contrast, harsh stigma and isolation for the accused person. In some cases when Indigenous battered women killed their intimate abusers, these battered women were shunned from their communities, which created prolonged suffering. In the case *R. v. Howard (1991)*, Marilyn

Howard had married her abuser and by default, became a part of his clan, however, the Chief of the clan explained to the court that she was never truly accepted among clan members,

> Court: Now I take it Gitsegukla, as I understand it, is a pretty close-knit community?
>
> Chief: Yes, it is.
>
> Court: Is the Grouse clan, is this the large clan in Gitsegukla?
>
> Chief: It's fairly large, yeah. It's about one of the largest there.
>
> Court: As I understand, if Marilyn Howard-when she married Terry Howard, would she be accepted into the clan or-
>
> Chief: No, we accept her as married to Terry, but we cannot accept her into our clan (*R. v. Howard,* 1991, pp. 2-3, lines 10-12 &1-3).

Howard lived in a small community where she married into a clan but never formed meaningful connections with its members *(R. v. Howard, 1991, p. 3)*. Therefore, after Howard killed her abuser, the community rejected her, and she was ultimately further victimized by the negative community stigma. During the appeal of her sentence, the defence counsel discussed the problematic actions of the sentencing judge (when he allowed anyone from Howard's community to speak about her character) despite the fact that she had never been accepted by them,

> The sentencing hearing was unique to say the least. After a plea of manslaughter was entered, Justice Dohm felt it appropriate that anyone who wished to comment on our client's character or on the impact of Terry Howard's death on the Native community should be heard. Unfortunately, this turned into an extended post hoc attack on Ms. Howard (*R. v. Howard,* 1991, p. 2, line 8).

Hence, Gitsegukla's members revictimized Howard by speaking negatively about her character during her sentencing hearing. Moreover, the sentencing judge participated in the revictimization of Howard by asking the members of Gitsegukla to discuss her character, knowing they did not accept her. The appeal judge, Judge Hollinrake, agreed with the defence counsel that the treatment of Howard during her sentencing hearing was unjust, "Having read the transcript in its entirety I

agree with counsel's opinion that this hearing 'turned into an extended post hoc attack on Ms. Howard'" (*R. v Howard,* 1991, p. 2, line 9). Often, Indigenous peoples are revictimized by both their communities by way of stigmatization or shunning, and by the criminal justice system's actors through a lack of cultural understanding and sensitivity. Many reports suggest that criminal justice actors are given insufficient cultural training regarding Indigenous offenders and that judges tend to operate using 'pluralistic ignorance', which Razack (1998) explains as those in power (from a white supremacist perspective) believing they know what is best for racialized people (p. 98). Judges who function using pluralistic ignorance assume that racialized groups, such as Indigenous peoples, are innately dysfunctional and thus need (white) guidance. Million (2013) describes this mindset as 'internalized colonization', in which Indigenous peoples are considered sub-human or lesser than their white counterparts, which functions so as to strategically exclude Indigenous peoples from social, political, and economic spheres (p. 48). Therefore, Indigenous battered women who killed their abusers may be doubly revictimized by both the stigmatization from their communities and by the underlying racism of criminal justice actors.

In addition, Justice Huculak discussed the negative stigmatization that Kahypeasewat received from her community, "And in this type of case where the loss of life is the most serious of offences that one can commit there's a very large stigma in this small community that Ms. Kahypeasewat has to deal with since the offence occurred" (*R. v. Kahypeasewat, 2006,* p. 185 lines 9-13). Hence, when serious crimes are committed in small communities, as many Indigenous communities are, the effects of the crimes can have a serious impact on members of the communities, not simply the people who were directly involved. In this way, it is not uncommon for Indigenous battered women who killed their abusers to become isolated or even shunned by their communities, which results in their revictimization.

Similarly, Poucette, who lived at Morely Reserve, suffered stigmatization from her community after committing the intimate homicide of her abusive partner (*R. v. Poucette, 2019, No 1284,* p. 10). Justice M. D. Gates described Poucette's deteriorated spirit due to the treatment she experienced from the community in the following way: "The accused and other members of her family reported to the author of the Gladue report that the accused has suffered social isolation as a result of the matter currently before the court. The accused describes herself as feeling sad and lonely most of the time" (*R. v. Poucette 2019, No 1284,* p. 10, line 59). Having first been victimized by her violent spouse, Poucette was revictimized by the negative stigmatization from her tight-knit community, which resulted in her isolation. Judge M. D. Gates continues to explain how common such community stigma is, "As many of the cases that have been provided to me by counsel make clear, this is a crime that has a broad impact on not only those closely linked to Mr. Twoyoungmen and Ms. Poucette, but also on the members of the small community where this offence took place" (*R. v. Poucette 2019, No 1284,* p. 4, line 22). Hence, it is common for serious crimes to impact Indigenous communities because their unique living situations are often tight knit in nature, and so many members are heavily affected. The revictimization of many Indigenous battered women who killed their abusers by their communities is often accompanied by further revictimization by the criminal justice system, as Million (2013) states, "They are Indian women versus a white patriarchal state, a state that first destroyed, then substituted itself for their family, which then sits in paternal judgement of their morals" (pp. 63-64). Million (2013) argues that the criminal justice system is a violent one that worked to assimilate Indigenous cultures and yet it now exists to decide the fates and livelihoods of so many Indigenous women (p. 64). The criminal justice system may not ultimately provide justice for Indigenous battered women who killed

because it participates in the revictimization of Indigenous peoples and thus simultaneously reinforces their subordination.

5.9 Theme #3: Indigenous Differences in Counselling and Sentencing Practices

The third theme coincides with the research question: What legal differences associated with Indigeneity exist among Canadian-Indigenous battered women who killed their intimate abusers? Indigenous peoples have always had unique culturally specific practices in terms of rehabilitation when crimes occur in the community. In this way, there exist differences associated with Indigeneity that are present within counselling and sentencing practices. There are three sub-themes for this theme: Indigenous Elders, Indigenous Healing Lodges, and Indigenous Sentencing Circles.

5.10 Sub-Theme #1: Indigenous Elders

Indigenous peoples possess a unique array of cultural practices that help to strengthen their mental and spiritual health, such as meeting and working with Elders, who are members of Indigenous communities who offer advice and wisdom to those who may be struggling (Hadjipavlou, Varcoe, Tu, Dehoney, Price & Browne, 2018, p. 608). Elders are therefore highly respected individuals and are considered a significant part of many Indigenous communities (Hadjipavlou et al., 2018, p. 608). Kahypeasewat had been meeting with Elders for counselling purposes, as her defence council explained,

> The fact that Valerie needs to do or has-has done some work in terms of her mental status, in terms of her spiritual well-being, working with the Elders, that sort of thing and she has made greats strides the last couple of years while she has been on bail supervision. It's certainly not-it's certainly not ended, I mean we can consider all of the facts of Valerie's life-in terms of that she hasn't had a particularly happy upbringing (*R. v. Kahypeasewat,* 2006, p. 148, lines 8-17).

The defence counsel discussed Kahypeasewat's success in attending therapy sessions with Indigenous Elders and touched on her struggles during childhood, which were impacted by intergenerational trauma. Through an intersectional lens, Kahypeasewat's individual factors such as her gender, Indigenous culture, and low economic status, coupled with the oppressive structural factors like colonialism, paved a foundation for her substance abuse issues and her victimization, which created her unique experiences with oppression that may help in understanding what led her to commit a crime. However, the judge questions the legitimacy of Elders for counselling, as he stated in a conversation with the defence counsel,

> Court: Is there any reason why she couldn't have been seeing someone all along?
>
> Defence counsel: She has been seeing Elders.
>
> Court: Yes, but I'm talking-I'm talking about other counselling.
>
> Defence counsel: She's dealt with it in a way that's certainly cultural and spiritual.
>
> Court: And how-you'll have to be more specific because I don't know what you mean by that. I mean what-what is she doing with Elders?
>
> Defence counsel: Well, she attends sweats. And you know, spends some time counselling with Elders, some of the Elders, I mean, certainly some people, you know, believe that-that is the best way to go. I don't disagree that she should see a therapist.
>
> Court: And I was just surprised that she hasn't been to some type of formal counselling either through staff at Tamera's House or through a referral (*R. v. Kahypeasewat,* 2006, pp. 164-166, lines 11-26 & 1-26)

This conversation demonstrates the judge's lack of cultural awareness regarding the important role that Indigenous Elders play in counselling, as he challenged the formality of Elders in contrast to western therapists, which reinforces a colonial perspective that challenges Indigenous self-determination. Indigenous self-determination refers to the right for Indigenous peoples to decide what is best for themselves in terms of family living and self-governing (Million, 2013, p. 5). As such, the judge demonstrates pluralistic ignorance by enforcing western counselling practices onto

an Indigenous battered woman, which may not be as culturally relevant to her as would be counselling with Indigenous Elders. This reinforces the subordination of Indigenous peoples by undermining their unique socio-legal practices by comparing them to western practices.

5.11 Sub-Theme #2: Indigenous Healing Lodges

When Indigenous peoples are sentenced to custody, sentencing judges in Canada can recommend that they attend healing lodges, which claim to promote rehabilitation while being culturally sensitive to Indigeneity (Nielson, 2016, p. 322). However, a place in a healing lodge is not guaranteed but rather can only be recommended, due to insufficient space as a result of a lack of funding (Nielson, 2016, p. 329). Moreover, Monture-Angus (1998) argues that additions to the Canadian criminal justice system made to accommodate Indigenous peoples are merely symbolic and not effective because the colonial foundation remains (p. 3). For instance, the implementation of Indigenous Elders onto parole boards and the use of healing lodges for sentencing Indigenous peoples does not change the ongoing colonial violence perpetuated against Indigenous peoples by the criminal justice system (Monture-Angus, 1998, p. 3). Despite this critique, judges continue to sentence many Indigenous battered women who killed their abusers with custodial sentences and sometimes justify their incarceration by citing the 'cultural relevance' that healing lodges can offer. As Wasicuna's sentencing judge stated, "Ms. Wasicuna, I've given you 30 months in jail. That's the best shot you've got in terms of accessing the healing lodges. I've also endorsed a healing lodge that would best help you, if possible, but any healing lodge I think would be of assistance to you" (*R. v .C. P. W, 2002*, p. 7, lines 29-33). Therefore, healing lodges may be used to justify the high degree of incarceration of Indigenous peoples despite the fact that carrying out these sentences within healing lodges cannot be guaranteed, as few exist, and space is limited.

Similarly, in the case *R. v. Poucette,* Justice M. D. Gates sentenced Poucette to prison and recommended a healing lodge,

> I sentence the accused to 2 years imprisonment in relation to the death of Brennon Twoyoungmen. Following her release from imprisonment, the accused will be bound by the terms of a probation order for a period of 3 years…I strongly recommend that this sentence be served at the Okimaw Ohci Healing Lodge in Maple Creek, Saskatchewan (*R. v. Poucette*, 2019, No. 1284, p. 26, lines 152-154).

Through a lens of Indigenous Feminisms, this demonstrates that Indigenous battered women who killed are revictimized by the Canadian criminal justice by the implementation of custodial sentences and that 'culturally sensitive' recommendations may be utilized to mask colonialism and increase Indigenous over-representation in prisons. Despite the addition of healing lodges, Indigenous peoples remain the most incarcerated peoples in Canada; Indigenous women are approximately three times more likely to be incarcerated than non-Indigenous women in Canada (Papalia, Shepherd, Spivak, Luebbers, Shea, & Fullam, 2019, p. 1067).

5.12 Sub-Theme #3: Indigenous Sentencing Circles

Sentencing circles can be used in addition to sentencing hearings when the accused is an Indigenous person, as it is a practice that attempts to reconcile Indigenous communities after the disruption of serious crime (Jones & Nestor, 2011, p. 49). A sentencing judge must recommend a sentencing circle be used, the accused must agree to participate, and important members of their Indigenous community, such as Elders, are called upon to participate alongside the sentencing judge, lawyers, police officers, and other involved parties like the victim and family members. Much like the addition of healing lodges for the purpose of providing culturally relevant rehabilitative practices for Indigenous peoples, sentencing circles may not be incredibly helpful for Indigenous peoples. Kahypeasewat volunteered to participate in a sentencing circle after

entering a guilty plea of manslaughter, however, the sentencing judge appeared to lack the necessary cultural training to lead the practice, as he recalled,

> My recollection of Valerie at the circle was that she was very closed, that she was not emoting or opening up until the point where she expressed anger, I think, at Mr. Bitternose, she was very subdued and I'm not-and-and as I say, I'm not trained in the area, but I have done a lot of circles and she was not emotional (*R. v. Kahypeasewat,* 2006, p. 171, lines 17-23).

This shows that the judge criticized Kahypeasewat for how she displayed her emotions as he simultaneously admitted that he has insufficient training in facilitating sentencing circles despite having performed many of them. Thus, the judge's confusion concerning Kahypeasewat's emotional response may be rooted in a white supremacist/colonial perspective, as he failed to understand potential Indigenous differences in showing emotions. The defence counsel alludes to this issue having stated,

> Her life is exposed. I think her sister gave some explanation about that-that by saying you know, she was very emotional about the fact when she was talking about Valerie's upbringing that there wasn't any love shared with them. And I remember that distinctly when she talked about there was no hugs and there was no-and part of that I think comes from the fact that her parents at one time had gone to residential school and were likely a bit closed themselves. And I think sometimes there is difficulty expressing feelings in a public forum (*R. v. Kahypeasewat,* 2006, p. 172, lines 10-24).

Hence, the defence counsel discussed the effects of intergenerational trauma and how these may have impacted Kahypeasewat's emotional response during the sentencing circle. Through an intersectional lens, Kahypeasewat's individual factors including her victimization by a domestic abuser, her struggles with substance abuse, and her Indigenous background intersect with the structural oppression from colonial practices like her parent's attendance at residential school, which may have had an impact on her emotional response during the sentencing circle. However, her different way of emoting should not be construed as her failure to participate because her voluntariness to do the sentencing circle in the first place shows she was willing to participate.

Moreover, the use of the sentencing circle, from an Indigenous feminist perspective, may be rather ineffective because the colonial roots of the criminal justice system remain unchanged despite the addition of an apparently culturally sensitive practice; although it is questionable if sentencing circles promote Indigenous rehabilitation given that judges sometimes lack Indigenous cultural training and therefore can misunderstand Indigenous peoples. Therefore, Indigenous differences in legal practices such as the utilization of Indigenous Elders for counselling, healing lodges for custodial sentences, and sentencing circles for deciding sentences, may prove to be ineffective in promoting culturally sensitive rehabilitation due to a lack of training and understanding regarding Indigeneity by criminal justice actors.

5.13 Theme #4: Stereotypes of Battered Women and Patriarchal Undertones of BWS

The research question that coincides with the fourth theme is: Do criminal justice actors use BWS to devalue the experiences of Canadian-Indigenous battered women who killed their intimate abusers? If so, how? BWS, while helping to explain the thoughts and behaviours of female victims of domestic violence, at the same time encompasses various patriarchal undertones that depict women as subordinate to men. Stereotypes of battered women can be used to belittle and depreciate their experiences in order to maintain male dominance and reinforce the subordination of women within the criminal justice system (Plumm & Terrance, 2009, p. 188). There are two sub-themes for this theme: The ‘Ideal’ Battered Woman, and Battered Women as Emotional and Irrational.

5.14 Sub-Theme #1: The ‘Ideal’ Battered Woman

BWS depicts ‘ideal’ battered women as quiet, passive women who killed their abusive partners out of fear and confusion due to constant domestic abuse (Bradley, 2015, p. 386). Since BWS describes battered women in a way that encapsulates weakness and submissiveness, this can

fortify patriarchy within the criminal justice system because in order to defend themselves, battered women must fit the mold of this stereotype. For instance, judge Marc David described Quannaaluk in a way that fit the stereotypical ideal battered woman, "Ms. Quannaaluk has no history of violent behaviour towards other people. Rather, she is described as someone 'who avoids conflicts or confrontations or becomes submissive'*"(R. v. Quannaaluk,* 2018, p. 10, line 81). Quannaaluk was described during her sentencing hearing as a battered woman who submitted to the violence of her intimate partner, and she was ultimately granted a suspended sentence. Hence, this case shows that a battered woman who fit closely to the mold of the 'ideal' battered woman depicted within the BWS explanation was given a more lenient sentence.

In contrast, if a battered woman does not encompass the stereotypical notion of the 'ideal' battered woman, then her victimization may be more harshly questioned by criminal justice actors. In *R. v. Poucette (2019),* Poucette did not represent the 'ideal' battered woman because she fought back against her abuser while being attacked (p. 12). As such, Justice M. D. Gates stated,

> I accept that the accused was assaulted by Twoyoungmen during the evening in question. She was assaulted at some point in the bedroom during the episode where Twoyoungmen placed his knees on her chest and pinned her arms back, and she was later assaulted in the hallway where Twoyoungmen choked her (*R. v Poucette,* 2019, No. 796, p. 7, line 76).
>
> I am also satisfied *that she intentionally enhanced portions of her account* so as to enhance Twoyoungmen's aggressive actions towards her while, at the same time, minimize her own actions (*R. v. Poucette,* 2019, No. 796, p. 12, line 75). [emphasis added]

The trial judge questioned Poucette's believability despite stating that he accepted that she had experienced victimization. The trial judge believed that Poucette 'enhanced portions' of her abuse, however, any sort of violence against a woman is a crime. Furthermore, BWS is based on a white perspective and thus cannot appreciate cultural differences associated with Indigeneity, which means that the stereotype of the 'ideal' battered woman is likely rooted in stereotypical white

feminine ideals that depict 'good' battered women as submissive and weak, and 'bad' battered women as argumentative and combative. The good/bad dichotomy solidifies norms about what actions are considered legitimate from a battered woman. In this way, if a battered woman fights back against her abuser, she is considered a violent woman undeserving of protections from BWS. Moreover, the stereotypes of femininity that create the idea of the 'ideal' battered woman are based on white women, which places racialized women at a clear disadvantage (Mossiere & Meador, 2018, p. 2871). For instance, Black women are stereotyped as aggressive and assertive, which stands in contrast to ideals of 'white' femininity and therefore insinuates that racialized battered women are unworthy of legal protection. (Mossiere & Meador, 2018, p. 2871). In *R. v. Poucette*, the prosecution probed Poucette regarding her engaging in verbal arguments with her abusive partner,

> Crown Prosecution: Right, and so he would be yelling at you and you would yell back at him, right?
>
> Poucette: But I always get so scared because when we start to argue, then she all-that's when he assaults me; and then I wouldn't do anything; and I would just end up with bruises and I get assaulted and I just-and from there, I wouldn't be allowed to go outside the house (*R. v. Poucette,* 2019, No. 796, p. 6, line, 29).

The Crown Prosecutor attempted to undermine Poucette's credibility as a battered woman by highlighting that she participated verbally in arguments with her abuser to portray her as a 'bad' or disagreeable battered woman during her trial. Therefore, BWS can use racist, gendered stereotypes of femininity in order to create an idea of what the 'ideal' or 'deserving of forgiveness' battered woman should look like: a submissive (white) woman.

5.15 Sub-Theme #2: Battered Women as Emotional and Irrational

The basis of BWS is that battered women are mentally unstable and overreact emotionally, which supports the gendered stereotype that women are emotionally unhinged (Plumm &

Terrance, 2009, p. 188). This is harmful for women because not only does it imply that women cannot control their emotions, but it reinforces the patriarchal idea that women need to be taken care of by men. Additionally, implying that emotions and rationality are oppositional constructs that are mutually exclusive categories ignores the fact that people must reason with their emotions to act in a reasonable manner (Bergman Blix & Wettergren, 2018, p. 7). Bergman Blix & Wettergren (2018) discuss the problematic way that the legal system views emotion, "Yet, because of the idea that pure rationality-that is-rationality 'uncontaminated' by any emotion-forms such as the sacred core value of the legal system, openly reflecting on a source of emotion would have a disqualifying effect" (p. 6). Hence, there often exists a dichotomous view of emotion and rationality within the legal realm whereby the latter can only exist in the absence of the former. For example, the prosecution depicted Kahypeasewat's actions as an emotional outburst when he stated, "But in any event, when you look at the facts, this isn't a woman who is reeling from a physical assault or a sexual assault or anything like that, it appears that this was a woman whose frustration with this particular relationship spilled over into violence" (*R. v. Kahypeasewat,* 2006, p. 128, lines 17-22*).* This shows that the prosecution based Kahypeasewat's actions on her frustration with her relationship, which undermines the abuse that she endured up to the point of the homicide. Stereotyping battered women as overly emotional rather than rational undermines the fact that they reason with their emotions based on their situations. Furthermore, intimate abusers often operate through the cycle of violence (that battered women must navigate emotionally and rationally), which encompasses three different stages. The first stage is based on the building of tension between the abuser and his victim, which can include threats and aggressive language (Walker, 2006, p.153). The second stage involves the perpetration of domestic violence where the abuser physically or verbally harms his victim (Walker, 2006, p. 153). The last stage is

the loving or calming period when the abuser attempts to console or apologize to his victim (Walker, 2006, p. 154). Often, battered women kill their intimate abusers during the calm stage, which means that there was no imminent threat of violence, however, this does not mean they acted irrationally. Many battered women, having been subjected to long term abuse, experience heightened levels of danger and thus always anticipate the next bout of violence from their abusers; this is a very different reality than what people see from the outside looking in.

Furthermore, a popular stereotype that is used to devalue the experiences of battered women is that they could have simply left the abusive relationships, and thus these women acted unreasonably or irrationally for remaining in violent situations (Rothenberg, 2003, p. 774). However, many battered women have rational reasons for staying in abusive relationships such as a fear of poverty and homelessness, losing custody of their children, and disrupting their children's lives (LaViolette & Barnette, 2013, p. 2). Moreover, Indigenous battered women face many barriers to leaving abusive situations due to the effects of settler-colonialism. For instance, the prosecution questioned Poucette's reasons for staying in an abusive relationship,

> Crown Prosecution: But you didn't leave?
>
> Poucette: No; I was scared. I'm scared of him.
>
> Crown Prosecution: Is that why you didn't leave?
>
> Poucette: Yeah, I felt I was trapped. I couldn't go anywhere. I couldn't even talk to nobody, especially when we didn't have no transportation at all. We couldn't-I couldn't go anywhere, and where we lived was so far away from the community (*R. v. Poucette*, 2019, p. 6, line 32).

The assumption that Poucette could have simply left the relationship is problematic because it does not consider the various reasons many Indigenous battered women have for not leaving their abusive partners. Individually, Indigeneity often intersects with low income, which demonstrates that Indigenous women cannot always financially afford to leave abusive relationships.

Structurally, Indigenous peoples, like Poucette, continue to be affected by colonialism, which has resulted in unfavourable living situations in which some are so remote that transportation out of a community is exceedingly difficult. In this way, the prosecution appears to lack education and understanding regarding Indigenous communities and the difficult circumstances that they navigate in their lives.

Similarly, the Crown Prosecutor for Kahypeasewat's case stated, "The reality is that Ms. Kahpeaysewat had her daughter and her son in the apartment that could have helped her in evicting him" (*R. v. Kahypeasewat, 2006*, p. 128, lines 8-10). Utilizing the term 'reality' to argue that Kahypeasewat could have easily left her abuser with her children's help reinforces the stereotype that battered women are irrational for staying in abusive situations. Furthermore, insinuating that Kahypeasewat should have left her abuser instills a victim-blaming culture, where the onus is on the battered woman (and her own children) to escape. The criminal justice system depicts Indigenous women as inherently prone to violence and victimization, which is a racist, sexist narrative used to mask the fact that the justice system continues to fail at protecting these women (Monture-Angus, 1998b, p. 2). Thus, in cases where Indigenous battered women kill their partners and BWS is used as a partial defense, criminal justice actors may draw upon gendered stereotypes to devalue their experiences.

5.16 Conclusion

Ultimately, this research sought to better understand the lived experiences of Canadian-Indigenous battered women who killed their intimate abusers, how Indigeneity was approached by criminal justice actors, and how BWS was used in these cases. First, intergenerational trauma with its roots in colonization appears to affect many Indigenous battered women who killed in terms of substance abuse issues and vulnerability to cyclical violence. This research helps to show that,

often, Indigenous battered women who killed struggle with alcoholism and cyclical familial and/or domestic violence, which are some of the long-term outcomes of state-induced colonial violence. Using an intersectional lens, the overlapping factors including racism, colonialism, and sexism intersect with Indigeneity, womanhood, and economic status that led to oppressive environments that make Indigenous battered women vulnerable to substance abuse and violence.

Second, various socio-cultural differences related to Indigeneity exist for Indigenous battered women who killed such as differences in language, expressing emotions, and community living. This research helps to shed light on how Indigenous battered women who killed can be misunderstood by criminal justice actors like police, paramedics, emergency operators, prosecutors, and judges, as Indigeneity is not carefully considered. From an Indigenous feminist stance, it can be argued that the Canadian criminal justice system is an extension of colonialism, as it (has historically and) continuously ignores many socio-cultural differences associated with Indigeneity (Monture-Angus, 1998a, p. 192).

Third, this research sought to show how differences relating to Indigeneity exist for Indigenous battered women who killed in terms of legal practices. Sometimes, Indigenous battered women who killed seek help from Indigenous Elders for counselling and can gain access to sentencing circles and healing lodges through the criminal justice system. However, criminal justice actors may question the legitimacy of Elders for the purpose of therapy, which is a colonialist perspective that reinforces the dichotomy between western ‘superior’ practices versus ‘inferior’ Indigenous practices. Moreover, Indigenous battered women who killed will not always have access to sentencing circles and healing lodges and can be misunderstood during these practices. Using Indigenous Feminisms as a guide, it can be argued that the addition of Indigenous initiatives to the Canadian criminal justice system such as healing lodges and sentencing circles

cannot induce true change because the colonial foundation of the structure remains (Monture-Angus, 1998b, p. 4).

Finally, BWS was examined in cases where Indigenous battered women killed their intimate abusers. This research helps to show that on occasion criminal justice actors may utilize BWS to undermine the credibility of Indigenous battered women by relying on (racist and) sexist stereotypes. For instance, Indigenous battered women who killed may not always fit into the mold of the 'ideal' battered woman according to BWS because the mold is based on white women's experiences; BWS may be incapable of appreciating cultural differences. Furthermore, criminal justice actors may rely on sexist stereotypes of battered women such as battered women are overly emotional and irrational in order to undermine their experiences with male violence, which maintains white heteropatriarchy. Overall, this research aimed to gain insight into the experiences of Indigenous battered women who killed their abusers, how these Indigenous women were treated by criminal justice actors regarding their unique aspects of Indigeneity, and how BWS was used in these cases.

Chapter 6: Conclusion

6.1 Introduction

In this final chapter, the following will be discussed: the researcher's interest in the research topic, the significance of the research, what this research means, and possible solutions and ideas for future research. This research sought to better understand the experiences of Indigenous battered women who killed their intimate abusers and how the Canadian criminal justice system approached the unique aspects and oppressions associated with Indigeneity. This research also examined gendered and racialized stereotypes that were used in the BWS explanation in court.

6.2 The Researcher's Personal Interest

My personal interest in researching the experiences and treatment of battered women stems from my own personal experience within a dangerous intimate relationship. According to Statistics Canada, most Canadian women who find themselves within abusive relationships are within a young demographic between the ages of 25-34 and closely behind are women ages 15-.24 (Sinha, 2011, p. 2). This young demographic is likely due in part to a lack of education regarding what domestic violence or intimate partner violence entails, what are the initial signs to look for when dating or in relationships, what to do if you think you are in danger, and what social and legal resources are available. Further research should be conducted concerning domestic violence in order to push for mandatory education for the purpose of preventing domestic violence before it occurs. Furthermore, countless stereotypes continue to exist in Canadian society that simplify battered women and criticize them for failing to leave violent relationships (Hamby, 2013, p.2). In this way, research about domestic violence is vital to the dismantling of false information that essentially promotes a victim-blaming culture. I, myself, have been judged and misunderstood concerning the reasons I stayed in an abusive relationship because stereotypes were used to belittle and devalue such complex experiences. I believe that if we educate young adults early in life about

the dangers of domestic abuse, there would be less domestic violence and a better general understanding of the complexities of violent intimate relationships.

The reason I chose to specifically research *Indigenous* battered women was because there is a gap in the literature regarding how these women fare within the Canadian criminal justice system and how Indigeneity affects their experiences. Structural oppressions that deeply effect Indigenous peoples such as colonialism, racism, sexism, and ongoing systemic discrimination, all intersect and make Indigenous peoples particularly vulnerable to criminalization in Canada (Sokoloff & Dupont, 2005, p. 47). As discussed, many incarcerated Canadian-Indigenous women have experienced violence and victimization in their lifetimes, yet this is left rather unacknowledged by the criminal justice system (Million, 2013, p. 40). In this way, I wanted to better understand how colonialism and intergenerational trauma affect the experiences of Indigenous battered women who killed their abusers and how the unique aspects associated with Indigeneity are approached by the criminal justice system and BWS.

6.3 The Significance of the Research

This research study holds significance because there continues to be a lack of research concerning Canadian-Indigenous battered women. Since colonization and continuing today through settler-colonialism and systemic discrimination, Indigenous peoples are forced into the margins of Canadian society despite the government's push for 'healing' through the Truth and Reconciliation Commission (Million, 2013, p. 12). If the Canadian government is serious about beginning to mend the fences with Indigenous peoples, then research is important to show the current impact of intergenerational trauma and the disadvantages that Indigenous women experience in the criminal justice system. This research is significant, as it helps to show how the

Canadian criminal justice system revictimizes Indigenous battered women who killed their intimate abusers.

As well, this research is important because it examines the ways in which BWS rests on a foundation of racist and gendered stereotypes that depict women as subordinate to men. BWS enforces the idea of the 'ideal' battered woman as someone who is white, quiet, passive, and weak minded, which is based on a white woman stereotype (Bradley, 2015, p. 386). Hence, BWS cannot likely appreciate differences in race or class, and so it is problematic that it remains the only explanation in Canada for why battered women kill their abusers, especially if so many of these women are racialized and Indigenous women (Monture-Angus, 1998, p. 199). Therefore, this research is significant because it helps to show that BWS may not necessarily be able to account for the experiences of all battered women, notably racialized and Indigenous women.

6.4 What This Research Means

This research illustrates the ways in which the Canadian criminal justice system institutionally maintains settler-colonialism and punishes Indigenous battered women for their victimization. Since colonization, the state has worked endlessly to eliminate Indigenous cultures and condemn Indigenous peoples; this has not stopped. The criminal justice system disproportionately targets and incarcerates Indigenous peoples despite the fact that state induced colonial violence created and sustains the oppressive living conditions which they are forced to navigate. Intergenerational trauma and its effects, such as substance abuse and domestic violence, are considered common characteristics of Indigeneity due to the promotion of gendered and racialized stereotypes by Canadian institutions. Indigenous battered women are victims of violence and yet so many of these women endure severe abuse without any state intervention or protection. Instead, Indigenous battered women who kill their abusers (most often for survival purposes) are

judged and ultimately condemned by a system whose actors operate through pluralistic ignorance and internalized colonization; they simply do not have a chance. In fact, these women have lost before they have even begun because they are stuck in a viscous cycle of violence: violence from their intimate partners and institutionalized state violence that reinforces the oppression of Indigenous peoples. The Canadian criminal justice system cannot offer any sort of justice to Indigenous battered women who kill because the system is so deeply embedded with racism, sexism, and colonialism that it only further penalizes these women. In summary, what this research means is that the Canadian criminal justice system and its actors maintain settler-colonialism by condemning Indigenous peoples for their oppressive circumstances that were forced upon them by state-induced colonial violence and by reinforcing a victim-blaming culture that criticizes Indigenous victims of domestic violence.

Furthermore, since BWS resists an intersectional analysis, as it cannot appreciate differences in culture and race, this means that Indigenous battered women who kill are less likely to argue BWS successfully in court. Additionally, BWS is riddled in gendered and racialized stereotypes that reinforce a dichotomy: white women who deserve protection versus racialized/Indigenous women who are undeserving of protection. In this way, the criminal justice system, its actors and BWS reinforce heteropatriarchy and colonialism. Therefore, this research means that Indigenous battered women who kill are not likely protected by BWS in court and that BWS is extremely problematic in terms of its reliance on harmful stereotypes.

6.5 Possible Solutions and Ideas for Future Research

First, this study showed that seven of the eight cases where Canadian-Indigenous battered women killed their intimate abusers involved alcohol as an aggravating factor. It should be noted that the involvement of alcohol in cases of homicide often leads to harsher sentences for the

offenders. Since substance abuse among Indigenous peoples and Indigenous communities is linked to intergenerational trauma, Indigenous battered women who kill may be more likely to be harshly sentenced if they suffer from alcoholism. A possible solution to the high rate of alcoholism in Indigenous communities is to implement resources, such as counselling services, within communities that are suffering. These resources should be funded by the government because it is state-induced colonial violence that created intergenerational trauma and its ongoing effects (like alcoholism), and so the government should be interested in mending its relationship with Indigenous communities (beyond apologies and hopes for 'healing'). Future research should focus on ways to help diminish the rate of substance abuse among Indigenous peoples and how resources to address alcoholism can be implemented within Indigenous communities to help those who are suffering and to prevent possible future contact with the criminal justice system.

Second, this research helped to show that many Indigenous battered women who killed their abusers had experienced familial and/or intimate cycles of abuse previously in their lives. Again, familial violence and domestic abuse are some of the long-term results of ongoing settler-colonialism and intergenerational trauma, so the state should provide resources, such as Indigenous women's shelters, to Indigenous women who find themselves stuck in abusive relationships. Future research should concentrate on how to prevent familial and domestic violence in Indigenous communities to reduce the number of instances where battered women end up taking the lives of their abusers.

Third, this research showed that sometimes unique socio-cultural aspects of Indigeneity, such as cultural differences in communication and in community living, are overlooked or misunderstood by criminal justice actors such as police, prosecutors, and judges. A possible solution to this issue is more in-depth, mandatory cultural education and sensitivity training for all

criminal justice actors in Canada. Future research should explore how the curriculum for Indigenous cultural training should be constructed so that criminal justice actors treat Indigenous peoples fairly and with respect.

Fourth, this research helped to demonstrate that Indigenous legal practices are not being implemented in the most efficient and culturally sensitive manner within the Canadian criminal justice system. In terms of counselling, the criminal justice system may fail to recognize counselling with Indigenous Elders as a legitimate practice, whereas western psychologists are more widely accepted as valid sources. Furthermore, Indigenous sentencing practices such as sentencing circles and healing lodges, although (sparsely) introduced into the mainstream criminal justice system, possess many restrictions, are severely limited in terms of access, and remain essentially small additions to the colonial system. A possible solution to the lack of cultural understanding regarding Indigenous Elders would be to implement more thorough mandatory training for judges in order to enhance both cultural sensitivity towards Indigeneity and to normalize the inclusion of Elders within the criminal justice system. Moreover, a possible solution to the many barriers that limit the number of Indigenous peoples who can access sentencing circles and healing lodges is that the state should fund these Indigenous initiatives in order to pay criminal justice actors to facilitate sentencing circles for all Indigenous defendants and to build more healing lodges so that all Indigenous offenders who are incarcerated have access to these Indigenous-specific spaces. Future research should examine how Indigenous counselling and sentencing practices can be improved within the criminal justice system so that they are respected as legitimate and are readily available to all Indigenous offenders rather than a select few.

Finally, this research helped to form a deeper understanding of how BWS is based on patriarchal stereotypes that belittle and devalue the experiences of battered women. Using

gendered stereotypes, BWS reinforces patriarchy and helps to maintain the subordination of women within the Canadian criminal justice system. Moreover, by relying on stereotypes based on white women, racialized and Indigenous battered women are excluded from successfully using BWS as a partial defense, which further marginalizes these vulnerable groups. In addition, this study may have detected that sometimes criminal justice actors frame Indigenous battered women, suffering from BWS, as both lacking in a mental capacity and relationship skills; a victim-blaming approach. A possible solution to this problem is to strike BWS as a partial legal defense and to create a new, full defense for battered women who kill their intimate abusers. The new defense should be free of gendered and racialized stereotypes, and it should incorporate an intersectional lens to analyze a multiplicity of oppressions, such as how culture, race, sexuality, socio-economic status, and so forth impact the experiences of battered women who kill. Future research should explore what an alternative to BWS would look like and what this would mean for Canadian-Indigenous battered women who kill their intimate abusers.

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