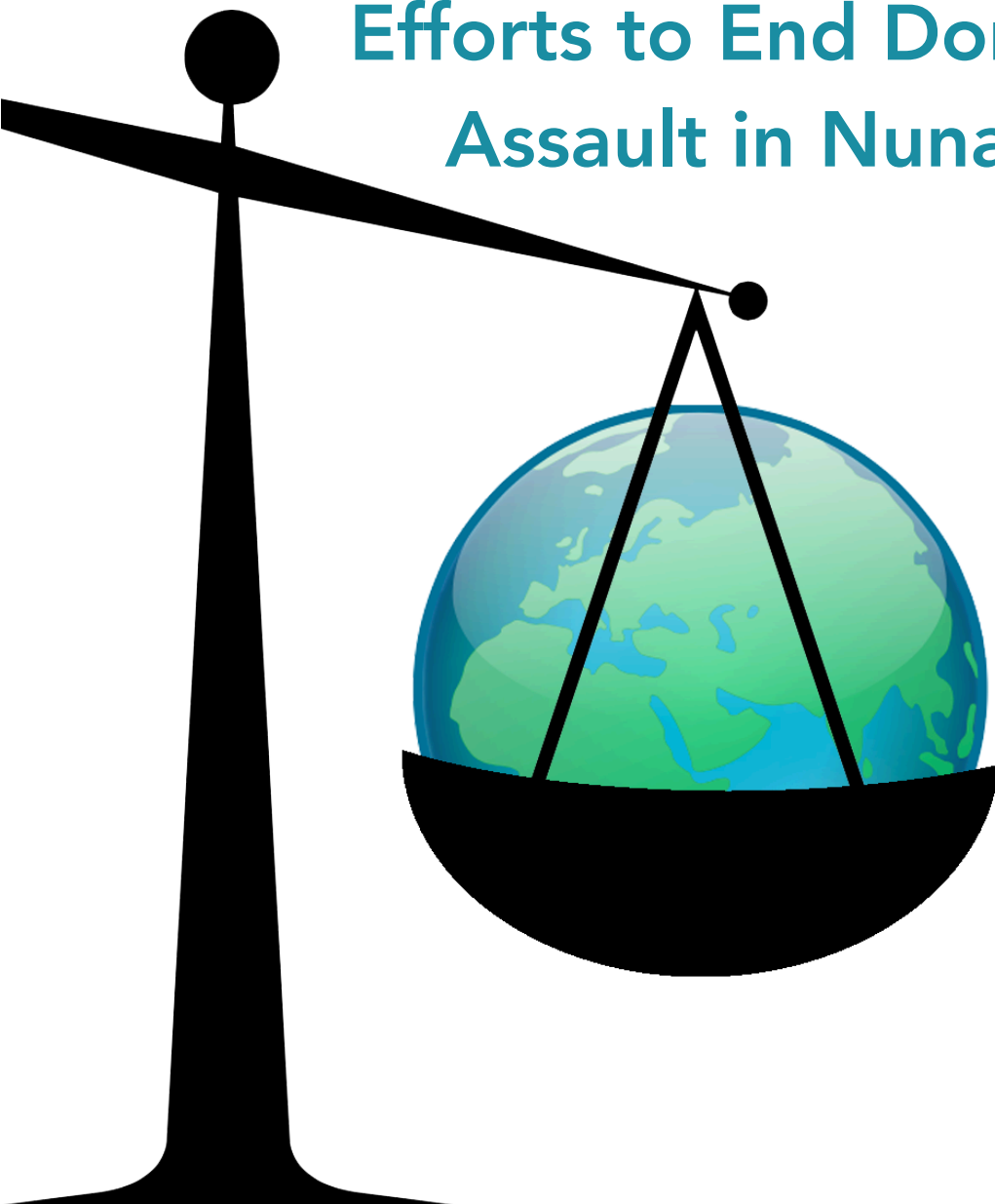
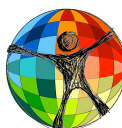


# **"None of that Paper Stuff Works": An Anti-Essentialist and Anti-Colonial Analysis of Efforts to End Domestic Assault in Nunavut**



INTERNATIONAL HUMAN RIGHTS INTERNSHIP WORKING PAPER SERIES



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# Introduction

Canada's Nunavut territory is in the middle of a crisis of violence and abuse. According to a health survey of 1,923 Nunavut Inuit<sup>1</sup>, fifty-two per cent of women and twenty-two per cent of men report being sexually abused as children.<sup>2</sup> In the same survey, fifty-two per cent of women and forty-six per cent of men reported experiencing at least one form of physical violence as an adult. Twenty-seven per cent of women reported some sort of forced sexual activity.<sup>3</sup>

Despite these daunting statistics, policymakers should not feel directionless. Although there is no single root cause to violence in a community, nonetheless, domestic violence – specifically, spousal violence represents a logical target for those who want to attack the problem, as it appears to be the center of the spiral of violence Inuit communities are trapped in. Based on police-reported data, 1, 132 Nunavummiut<sup>4</sup> were victims of family violence in 2010.<sup>5</sup> Half of those victimized were assaulted by their spouse.<sup>6</sup> The rate of family violence is the highest in Canada, and a Nunavummiuq is 17 times more likely to be a victim of family violence than someone who lives in Ontario, Canada's province with the lowest rate of family violence.<sup>7</sup>

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<sup>1</sup> According to the 2006 Canadian census, eighty-four per cent of Nunavut's population is Inuit. The vast majority of the remaining population are white Canadians. It is worth noting some studies of the territory focus on the entire population, while other focus only on the Inuit population.

<sup>2</sup> Jim Bell, "Nunavut study reveals widespread mental distress, suicidal thoughts, childhood sexual abuse", *Nunatsiaq News* (2 October 2012) online: NunatsiaqOnline <<http://nunatsiaqonline.ca>>

<sup>3</sup> Tracey Galloway and Helga Saudny, *Inuit Health Survey 2007-2008: Nunavut Community and Personal Wellness*, (St-Anne-du-Bellevue: Center for Indigenous Peoples' Nutrition and Environment, 2012), p27.

<sup>4</sup> Nunavummiut is the plural demonym for the residents of Nunavut. Nunavummiuq is the singular demonym.

<sup>5</sup> Nunatsiaq News, "Nunavut's sky-high family violence rates tops in Canada", *Nunatsiaq News* (23 May 2012) online: NunatsiaqOnline <<http://www.nunatsiaqonline.ca>>

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

Violence is a learned behaviour and victims of violence are statistically more likely to perpetuate it. Studies of American children show that of those who were abused, approximately one-third will go on to later abuse a child.<sup>8</sup> Boys who witness domestic violence are more likely to perpetrate it when they grow up, while girls who witness it are more likely to become victims.<sup>9</sup>

The prevalence of spousal violence in Nunavut in Nunavut has occasioned various law and policy reforms. The Public Prosecution Service of Canada has policies specific to domestic abuse and the North. The Nunavut legislature has passed the Family Abuse Intervention Act, which created both new legal procedures for addressing domestic abuse, and the position of Community Justice Outreach Worker to help facilitate the use of the procedures. Rankin Inlet's friendship centre launched a spousal-assault pilot project.

A similar barrage of solutions would invite study to compare and contrast the approaches and their effectiveness; however, the case of Nunavut and spousal abuse probably demands it more. Female Inuit victims of spousal abuse face a double marginalization through their status as female and aboriginal. Therefore, reforms intended to combat spousal abuse in Nunavut face an intersectional challenge; they must simultaneously strive to overcome both the patriarchal as well as colonizing nature of the justice system in Canada. A project that ignores either element, or the interaction between them is likely to end in failure or even exacerbate the problems it aims to solve.

This study will endeavour to assess the aforementioned programs through two different lenses. The first will be that of the anti-essentialist lens. This brand of feminism

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<sup>8</sup> Child Welfare Information Gateway "Long-Term Consequences of Child Abuse and Neglect" (US Department of Health and Human Services, Administration for Children and Families), 2008. Available at [http://www.childwelfare.gov/pubs/factsheets/long\\_term\\_consequences.cfm](http://www.childwelfare.gov/pubs/factsheets/long_term_consequences.cfm)

<sup>9</sup> Child Welfare Information Gateway "Domestic Violence and the Child Welfare System" US Department of Health and Human Services, Administration for Children and Families), 2009. Available at [http://www.childwelfare.gov/pubs/factsheets/domestic\\_violence/](http://www.childwelfare.gov/pubs/factsheets/domestic_violence/)

seeks to recognize the differences in the characteristics and experiences of women of different ethnicities, sexualities and locations and integrate them into its theory and practice. Consequently, it is particularly relevant for the Nunavut context. Additionally, anti-essentialism has already been used to critique laws aimed at decreasing domestic assault. Those critiques will be explored before they are applied to the Nunavut context.

The second lens is that of a Taiaiake Alfred's anti-colonial approach to spousal abuse. While it is unclear to exactly what degree domestic violence existed among the pre-contact Inuit, elders are clear that the current generation experiences much more domestic violence than they did.<sup>10</sup> If the colonial experience has played a large causal factor in the development of domestic violence as a cultural phenomenon, there is good reason to believe decolonizing theory will be helpful in assessing whether domestic violence initiatives address Inuit history and culture. As colonialism is an inherently contextual process, Nunavut's Inuit experience will be explored before an examination of Alfred's theories and how they apply to the problems of domestic violence and spousal abuse.

The end result of applying both a feminist and anti-colonial lens is that a multitude of fallacies for all the current initiatives appear, though some are graver than others. While many policies present problems when viewed with either lens, there comes a point in some analysis where feminism is satisfied while the anti-colonial perspective still finds fault. The consequences of this divergence are explored in the conclusion.

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<sup>10</sup> Janet Mancini Billson, "Shifting gender regimes: The complexities of domestic violence among Canada's Inuit" (2006) 30 *Etudes/Inuit/Studies*, p73.

# Part I. Dominance Feminism-Inspired Policies and the Anti-Essentialist Critique

Anti-essentialist feminism critiques many earlier forms of feminism. Dominance feminism was particularly influential in theorizing domestic violence. Consequently it serves as the foil to anti-essentialist feminist thought in this topic area.

## Dominance Feminism

The 1970s and 1980s saw the beginning of a movement to get the issue of “battered women” or domestic violence taken seriously by the courts and the police. Police had been slow to arrest men for domestic assaults, for reasons ranging from attitudes (“the view that what went on in the home was a personal matter”) to legal issues (“historically, police officers were unable to make arrests without warrants in misdemeanor cases unless they personally witnessed the assaults.”)<sup>11</sup> At the same time as the police exercised their discretion and didn’t arrest abusive partners, the justice system was also failing victims of battering. Prosecutors were prosecuting only a small amount of the cases that did make it to them.<sup>12</sup> Reasons suggested for this include a patriarchal attitude on the part of the prosecutors and the perceived attitudes of judges, or evidentiary problems, including but not limited to the frequent difficulty in getting the victim to testify.<sup>13</sup>

The problems experienced by women who were trying to get the legal system to take domestic violence seriously fit well with the trend in feminist thinking at the time. Dominance feminism saw sexuality as the main means by which men subjugated women. The legal

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<sup>11</sup> Leigh Goodmark, “Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases” (2009) From the Selected Works of Leigh Goodmark Available at: [works.bepress.com/leigh\\_goodmark/6](http://works.bepress.com/leigh_goodmark/6), page 11

<sup>12</sup> Goodmark, “Autonomy Feminism”, 14.

<sup>13</sup> Ibid, 15.



system's refusal to address violence against women was a symptom of society's drive to sexually dominate women.

In 1979, Lenore Walker's 'cycle of violence' informed understandings of domestic violence by formulating a model of an abusive relationship looks like. She posited that the relationship experiences "a tension-building phase, followed by an acute battering incident, culminating in a honeymoon period."<sup>14</sup> The cycle repeats itself, with physical violence becoming more intense and more frequent. While this does describe an existing pattern,<sup>15</sup> it has come to dominate the idea of what domestic violence looks like to the point where relationships not conforming to it have trouble being recognized as abusive.

The cycle of violence meshed well with another dominance feminism concept of domestic violence: 'learned helplessness'. Walker posited that when a woman is repeatedly beaten, she learns that nothing she can do will stop the violence and in turn becomes helpless and passive.<sup>16</sup> Not only did this picture of battered women work well the cycle of violence model, it also seemed to be a case study for dominance feminists in the way men were able repress and subjugate women.

## **Mandatory Arrest and No-Drop Prosecution Policies**

The 1980s witnessed many activists and lawmakers inspired by dominance feminism embark upon a project to reform laws concerning domestic violence. The resulting legal reforms stressed the seriousness at the crime, while at the same time depriving women of their discretion of how to deal with the problem.

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<sup>14</sup> Leigh Goodmark, "Reframing Domestic Violence Law and Policy: An Anti-Essentialist Proposal" (2009) 31:39 Journal of Law and Policy, 41.

<sup>15</sup> Ibid, 42.

<sup>16</sup> Ibid, 43.

The most prominent legal reform was the enactment of “mandatory arrest” laws. These reforms dictated that if a police officer thought there was probable cause that an act of domestic assault had been committed, they were required to arrest the abuser. While this policy prevents police officers from ignoring a woman who is asking for help, it also means that a victim who requests that her abuser not be arrested must be ignored. This includes situations where the police have not been alerted to the situation by the victim, but by other means (i.e. a noise complaint).

Another major reform was the enactment of no-drop prosecution. This meant that prosecutors would not drop charges against abusers even if the victims requested or refused to cooperate. One solution for cases with an uncooperative witness was the practice of victimless prosecution, where prosecutors relied on physical evidence, other witnesses and previous statements by the victim to obtain a conviction. Some jurisdictions go even further and subpoena a victim to compel her to testify, even going as far as issuing warrants for the arrest of non-cooperative victims and having them incarcerated until trial.<sup>17</sup> Finally, many jurisdictions enacted laws that prohibited mediation of family law cases where domestic violence has been present. The rationale is that even with a skilled mediator, the process can allow the victimizer another chance to reassert his power over his victim.

## **The Anti-Essentialist Critique**

Anti-essentialism’s critique of dominance feminism is that it ascribes a limited set of characteristics and interests to all women. Not surprisingly, the characteristics assigned to women tend to be those associated with middle-class white women, with the experiences of women of different classes, races and sexual orientations being unrepresented. The tendency of dominance feminism to essentialize is reflected in its theories of domestic violence. While the cycle of violence may be an accurate portrait of some violent relationships, it does not

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<sup>17</sup> Goodmark, *“Autonomy Feminism”*, 20.

capture all violent relationships. The prominence of the cycle of violence model means that atypical cases go unrecognized, and the judiciary is slow to believe claims made by women whose situations don't fit the pattern.<sup>18</sup> Learned helplessness also encourages making assumptions about how women in violent relationships act and has been increasingly questioned as an actual phenomenon, with even Lenore Walker modifying her views.<sup>19</sup>

Anti-essentialist feminists have major criticisms of mandatory arrest and no-drop prosecution policies. The major complaint is that the policies pursue some goals at the expense of others. Early in the battered women's movement activists identified six goals that legal reform was to pursue: increasing victim safety, stopping the violence, holding perpetrators accountable, divesting perpetrators of control, restoring women who have been battered, and enhancing agency of women who have been battered.<sup>20</sup> Mandatory arrest and no-drop policies aim to protect women's safety and hold offenders accountable, while doing nothing to restore women and working in direct opposition to their agency. These policies assume the victim suffers from learned helplessness and aim to break the cycle of violence. There is no room for a victim who wants to prioritize something other than her safety, nor can a victim in an atypical situation make choices that best fit her circumstances.

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<sup>18</sup> Goodmark, *"Reframing Domestic Violence Law and Policy"*, 42.

<sup>19</sup> *Ibid*, 44.

<sup>20</sup> Goodmark, *"Autonomy Feminism"*, 5-6.

## Part II. Nunavut and the Inuit Colonial Experience

High rates of violence are not the only problems plaguing Nunavut. On almost every measure of human development Nunavut ranks far behind the rest of the Canadian population. Life expectancy in the territory is 73 years, far below the Canadian average of 81.6 years.<sup>21</sup> Nunavut also has the lowest average years of schooling in the country, with an average of 10.9 years per person, compared to the Canadian average of 12.5.<sup>22</sup> The education numbers likely don't accurately reflect the real situation, where practices like "social promotion" mean it is possible to graduate from high school and be functionally illiterate.<sup>23</sup> Poor education results compound into more problems. The territorial government has been trying to decrease dependency from southern professional, and build its administrative capacity. The Canadian Auditor-General reported however that twenty-three percent of public service positions go unfilled at the same time as the territory has a twenty per cent unemployment rate.<sup>24</sup> The territory has the highest birthrate in Canada, with half the territory's population under the age of 25.<sup>25</sup> This population boom has lead to a housing shortage, and reports that 7 in 10 preschoolers come from houses without adequate food.<sup>26</sup> It is very likely many of Nunavut's biggest challenges lie ahead of it.

A harsh climate and isolated location explain some of the hardships the people of Nunavut face. At the same time however, the territory's situation cannot be fully understood

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<sup>21</sup> Elspeth Hazell, Kar-Fai Gee and Andrew Sharpe, *The Human Development Index in Canada: Estimates for the Canadian Provinces and Territories, 2000-2011*, (Centre for the Study of Living Standards, May 2012), p23-24.

<sup>22</sup> Ibid, 26.

<sup>23</sup> Patrick White, "The Trial of Nunavut: Lament for an Arctic nation", *The Globe and Mail* (1 April 2011) online: Globe and Mail <<http://www.theglobeandmail.com>>

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

without an examination of the Inuit's post-contact history. Interactions with Canada's European population literally reshaped the Inuit's way of life. Before contact, the Inuit lived in nomadic communities consisting of a few families, totaling around 40 or 50 people.<sup>27</sup> Many factors combined to change this practice. Years of trade with whaling camps created a dependency on foreign goods and the loss of certain survival skills.<sup>28</sup> Starting in 1949, the government began paying family allowances to the Inuit in the form of credit made in their name at trading posts, increasing the incentive to centralize.<sup>29</sup> The construction of day schools and other government services also helped end the nomadic tradition. The Northwest Territories also saw an influx of southern laborers in the 1950s with the construction of the DEW Line early-warning radar devices. Consequently, the population of Nunavut now lives in just 27 communities, with populations ranging from 200 to 7000 people.<sup>30</sup> All of this has not only fundamentally changed the Inuit way of life, but has put them in constant contact with a government that has rarely understood Inuit interests.

## Passive Colonization

The Canadian government's policies toward the Inuit from when they acquired the title to Britain's arctic possessions in 1869<sup>31</sup> to the mid-twentieth century has been described as "a passive approach to colonialism."<sup>32</sup> Although the government has largely ignored the territory and its inhabitants for a large portion of Canadian history, does not mean there has not been a distinctly colonial relationship. There have been numerous incidents where government has exercised its power over the Inuit for self-interested reasons, denying Inuit

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<sup>27</sup> Billson, 4.

<sup>28</sup> Shelagh D. Grant, *Arctic Justice* (Montreal: McGill-Queen's University Press, 2002), 22-23.

<sup>29</sup> Ibid, 250.

<sup>30</sup> Billson, 4.

<sup>31</sup> Natalia Loukacheva, *The Arctic Promise: Legal and Political Autonomy of Greenland and Nunavut* (Toronto: University of Toronto Press, 2007), 18.

<sup>32</sup> Ibid, 21.

agency and dignity. One glaring example is that the Inuit were not spared the horrors of the residential school experience. Between 1950 and 1957 alone, 1,646 Inuit residents of the North West Territories attended residential school.<sup>33</sup> While the shift to permanent settlements facilitated access to day schools, many families were forced to send their children to boarding schools, often by government agents who threatened to cut off the Family Allowance if children did not attend.<sup>34</sup> Those who experienced residential school are often called the “lost generation.” They underwent a “loss of culture, family-bonding, self-esteem as a result of government and paternalism and prejudice.”<sup>35</sup> Residential schools also introduced the practice of physically disciplining children into the culture, where it had never previously existed.<sup>36</sup>

Another example of the Canadian government caprice towards the Inuit is the forced relocation program. In an effort to protect Canadian sovereignty over its Arctic possessions, Nunavut’s northernmost communities of Resolute and Grise Fiord were created in the 1950s. They were created by the Canadian government which pressured a number of Inuit families from northern Quebec, and the hamlet of Pond Inlet to relocate to uninhabited (and barely habitable) land above the Arctic Circle. When the families asked to be returned to their original homes, the government refused. The Royal Commission on Aboriginal Peoples would later call the relocation “one of the worst human rights violations in the history of Canada.”

Finally, even the presence of government officials in the Inuit communities had traumatizing effects. For instance, in the 1950s, the Inuit witnessed a rapid decline in the population of their qimmuit, or sled dogs. While the spread of communicable dog diseases

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<sup>33</sup> David King, *A Brief Report of the Federal Government of Canada's Residential School System for Inuit*, (Aboriginal Healing Foundation, 2006), 5.

<sup>34</sup> Ibid, 15.

<sup>35</sup> Ibid, 16.

<sup>36</sup> Ibid.

and the increasing presence of snowmobiles were connected to the decline, the RCMP also shot many of the highly-prized dogs to enforce a government-imposed ordinance that had no connection to the needs of the community, or merely to intimidate and coerce the Inuit. It is estimated that at least 1,200 dogs were killed in the Baffin Region alone.<sup>37</sup> The loss of dogs could mean a life-long end to hunting for an individual.<sup>38</sup>

## Foreign Justice

Before considering the way in which the law could play a role in ending domestic violence in Nunavut, the historical interaction of the residents of the territory and the law itself must be understood. Before contact with Europeans, Inuit had no formal justice mechanisms. Taboos regulated behaviour, and the small size of the communities meant that disputes were settled using “informal law-ways.”<sup>39</sup> For those whose behaviour endangered the community, the sentence was death.<sup>40</sup> This way of life was disturbed when the RCMP began to set up detachments in the region in 1903.<sup>41</sup> By the 1920s, a string of detachments were set up in the Eastern Arctic region, and the clash of justices began. The way Canadian law ran roughshod over Inuit law is exemplified by the by one of the first murder trials held in the territory. In 1922, an Inuit man shot and killed a deranged trapper who had threatened to shoot people’s dogs unless they handed him their furs. Nuqallaq killed the trapper with the permission of his community, in conformity with the Inuit practice of killing those who endangered the group’s survival. In an effort to display sovereignty over the territory, the

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<sup>37</sup> Qikiqtani Truth Commission “Inuit Sled Dogs in the Baffin Region, 1950 to 1975” Available at <http://www.qtcommission.com/actions/GetPage.php?pageld=39>

<sup>38</sup> Ibid.

<sup>39</sup> Loukacheva, 102.

<sup>40</sup> Dorothy Harley Eber, *Images of Justice* (Montreal: McGill-Queen's University Press, 1997), 15.

<sup>41</sup> Ibid, 14.

man was charged with murder and convicted of manslaughter.<sup>42</sup> Not all cases ended so unjustly. The first Chief Justice of the Northwest Territories was known for bending the law, holding jury trials and exercising his discretion in an attempt to fit the law to the realities of the territory.<sup>43</sup> Even with attempts at adaptations, the end result is still one culture forcing its law on another.

The current situation of the legal system in Nunavut is not wholly positive. Former Crown prosecutor Pierre Rousseau has stated “Nunavut’s dysfunctional justice system destroys lives, ignores Inuit culture and is a major cause of inter-ethnic conflict” and he suggests that the Inuit should be allowed to solve their problems at the community level.<sup>44</sup> While the problems with the justice system are very apparent, there is acceptance among the Inuit that things cannot return to how they were, and the courts may play a necessary role in the life of the territory.<sup>45</sup> However, there is much to back up Rousseau’s opinion that Nunavut’s legal system does not yet belong to the Inuit. None of the judges of the Nunavut Court of Justice are Inuit,<sup>46</sup> and there are only two practicing Inuit lawyers in the territory.<sup>47</sup> The majority of Nunavut’s legislature may be Inuit, but the federal government still controls the criminal law. Additionally, legal literacy in the territory is very low. Any efforts to curb though domestic violence through the law must be cognizant of the historically tenuous and occasionally oppositional relationship the people of Nunavut have had with the colonially imposed legal system.

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<sup>42</sup> After serving more than a year in prison in Manitoba, some officials involved in his prosecution secured an early release for Nuqallaq, based on the fact he had become severely ill. He was returned to Baffin Island, a move that accidentally introduced tuberculosis to the area (Grant).

<sup>43</sup> Eber, 24.

<sup>44</sup> Loukacheva, 100.

<sup>45</sup> Eber, 7.

<sup>46</sup> Nunavut Court of Justice, “Meet the Justices” website. Available at <http://www.nucj.ca/judges.htm>

<sup>47</sup> Mandy Samurtok, personal communication, 2 August 2012.





## Part III. Taiaiake Alfred's Anti-Colonial Prescriptions

Mohawk scholar Taiaiake Alfred is a major proponent of the idea that Canada's relationship with aboriginal people should be characterized as an ongoing colonialism. He follows his contention with the idea that Canada's aboriginal population has internalized this colonial mentality, and that subsequently, colonialism is reproduced through aboriginal government organization that are based on settler governance concepts.<sup>48</sup> Of Nunavut, Alfred says "the Inuit people are not the titular heads of government, but the apparatus of government is staffed and controlled mainly by white southerners, and it operates in much the same way as the Canadian territorial government did in the period of open colonization."<sup>49</sup> The facts recounted above make it clear Alfred's assessment applies to Nunavut's justice system as well.

For Alfred, domestic violence is one of the outcomes of the ongoing colonial experience. "Many men have added to Native women's oppression by inflicting pain on their wives.... Once we fully understand the idea of oppression, it doesn't take much further insight to see that men's inability to confront the real source of their disempowerment and weakness leads to compound oppression for women."<sup>50</sup> Clear that the colonial experience is not an excuse, Alfred suggests four prerequisites for recovery: "awareness of the pain's source; conscious withdrawal from an isolated unfocused state of rage; and the development of a supportive community and the courage to begin attacking the causes of discontent and deprivation."<sup>51</sup>

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<sup>48</sup> I choose to use the word 'settler' to represent European or non-aboriginal Canada ideas and populations throughout this essay in lieu of terms like 'western'.

<sup>49</sup> Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Oxford: Oxford University Press, 2009), 27.

<sup>50</sup> Ibid, 59.

<sup>51</sup> Ibid, 60.

Alfred's theory appears to be highly relevant to the assessment of Nunavut's attempts to tackle domestic violence. First, Nunavut's colonial experience and high rates of domestic violence are exactly what Alfred is addressing. Additionally, a similar experience with domestic violence among other colonized indigenous groups suggests that Alfred is correct in drawing a link between colonization and domestic violence. Maori society traditionally held violence towards a woman as an affront to her and her extended family. Incidents were rare, and when they did occur, resulted in costly punishments to the abusive man's extended family.<sup>52</sup> In 2010, fifty per cent of New Zealanders arrested for male on female violence were Maori, even though the Maori only make up fifteen per cent of the country's population.<sup>53</sup> Traditionally among the Navajo, women shared equal and sometimes superior rights to men, including rights relating to the ownership and control over property.<sup>54</sup> In early Navajo history, rape was an almost unknown phenomenon, and "domestic violence and child abuse were known, but were an aberration."<sup>55</sup> In 1999, of 600 major crimes reported on the Navajo reservation, thirty-two per cent involved domestic violence.<sup>56</sup> These two case studies lend credence to Alfred's idea of domestic violence as an outcome of the colonial experience.

Alfred's theories are also helpful because they address the male side of the domestic violence coin in a way anti-essentialist theory does not. It is notable that the six goals of domestic violence policy identified by the battered women's movement do not include recovery. Alfred's internal colonialism analysis and his prescriptions for recovery are helpful tools to add to the battered women's movement's goals when analyzing policy. They have inspired much of the commentary and many of the possible solutions discussed below.

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<sup>52</sup> Stephanie Milroy, "Maori Women and Domestic Violence: The Methodology of Research and the Maori Perspective" (1996) *Waikato Law Review*, 4(58), p. 71.

<sup>53</sup> Heather Sharpe "New Zealand Faces Its Dark Secret", *BBC News Online* (29 January 2007) online: *BBC News Online* <<http://www.bbc.co.uk/news/>>

<sup>54</sup> Diane McEachern, Marlene Van Winkle, Sue Steiner "Domestic Violence Among the Navajo" (1998) *Journal of Poverty*, 2(4), p.35.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Daily Courier* (Arizona), "Navajo Nation to Focus on Domestic Violence" (1 November 1999), 3A, online: *Google News* <<http://news.google.com>>

## **Part IV. The Public Prosecution Service of Canada's No-Drop policy**

The Public Prosecution Service of Canada (PPSC) has policies on how to handle cases of domestic violence that are specific to the three territories. Three policies contained within the prosecutors policy manual, the 'Deskbook', guide prosecutors' handling of domestic violence towards a Dominance Feminism approach.

### **No-Drop Prosecution**

The first essentialist policy is that complainants and victims are not able to have the charges against the alleged abuser dropped. The PPSC has sole discretion on whether the charges are placed and while the Deskbook's policy does not remove prosecutor's discretion on whether to proceed, it firmly reminds prosecutors of "the strong public interest in the denunciation and deterrence of spousal violence."<sup>57</sup> In the same vein, the Deskbook also instructs that the likelihood of the victim cooperating with prosecution or whether the couple will continue a relationship if the accused is granted bail should not be taken into account when making decisions about pre-trial detention. Instead prosecutors are to "consider any and all terms of release which are necessary to preserve the evidence, protect the complainant, and avoid the commission of any further offence."<sup>58</sup> This policy essentially removes the victim from having any influence on the bail process.

Taking the victim's discretion out of both the bail hearing and prosecution is a clear violation of women's agency. While the woman's safety is ostensibly protected, other interests she might have placed above her safety may suffer. The loss of the senior male member of the family can mean a loss of income, or for families where hunting is a crucial

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<sup>57</sup> Public Prosecution Service of Canada (PPSC), *The Federal Prosecution Service Deskbook*, "Part VI: Policy in Certain Kinds of Litigation - Chapter 28", Section 28.2.

<sup>58</sup> PPSC, Section 28.4

part of the home economy, food. Even when an unemployed man is arrested, it can mean deprivation. Social assistance payments are not paid when a person is incarcerated. While domestic violence does occur in financially secure families,<sup>59</sup> money issues are often cited as a catalyst to domestic violence in the Inuit context,<sup>60, 61</sup> thus the temporary absence of the abuser may create a situation more likely to encourage violence when he returns.

Beyond financial issues, the loss of the abuser can mean other deprivations. Abusive relationships are complicated and offenders often provide victims with emotional support as well as abuse.<sup>62</sup> Some literature goes as far as to say that the detention of the offender is a second loss for the victim, the loss of the family member being its own calamity.<sup>63</sup> It may also deprive women of a tool in mediating their relationship. It has been suggested the women use police intervention as a signal to their husband that he has crossed a line and then drop the charges when the message has been received. No-drop prosecution ends women's ability to act in this way.<sup>64</sup>

While the idea of violence is hard to stomach, no-drop prosecution makes the assumption that women aim to sever ties with their abuser. Considering how interconnected people are with their partners through finance, children and family, this is not always a reasonable option. The small size of communities in Nunavut only compounds the interconnection. Taking choices away from women living in situations that are far from the experience of policy makers is the worst kind of paternalism.

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<sup>59</sup> Billson, 8.

<sup>60</sup> Pauktuutit Inuit Women's Association, *Research Report: Applying Inuit Cultural Approaches in the Prevention of Family Violence and Abuse* (April 30, 2005), 4.

<sup>61</sup> Billson, 8.

<sup>62</sup> Arlene Weisz, "Legal advocacy for domestic violence survivors: The power of an informative relationship" (March/April 1999) *Families in Society*, 80(2), 139.

<sup>63</sup> Pauktuutit Inuit Women's Association, 14.

<sup>64</sup> Leigh Goodmark, *A Troubled Marriage: Domestic Violence and the Legal System* (New York: New York University Press, 2012), 140-141.

## Diversion Skepticism

The second PPSC policy is that prosecution is seen as “usually” being in the public’s best interest. Diversion programs are only to be considered in “exceptional circumstances.” The Deskbook requires that the complainant is willing to consider an alternate to prosecution, the violence was minimal, the offender has no record of previous violent offenses, the offender is willing to change, and a program that is likely to reduce violence is available.<sup>65</sup> While only the complainant’s willingness to have the case go to a diversion program appears to be mandatory, the long list of facts makes it seem as if diversion is a very circumscribed option. It should not be surprising that the state is slow to recognize the validity of alternative ways of dealing with crime besides their homogenous system.

## Reluctant Witnesses Support

The final policy instructs prosecutors to put a “reluctant witness” in contact with a victim witness assistant or another support person early in the process, as well as considering measures such as barring the public from the court and publication bans on the victim’s identity.<sup>66</sup> With this policy the PPSC has avoided the excessive assault on women’s agency that jurisdictions that force testimony commit. The policy appears to incorporate the conclusion of studies that have found women who receive advocacy services show increased commitment to the criminal justice process and are more likely to have their abusers found guilty.<sup>67</sup>

Experiences inside the American legal system suggest that the process can be empowering for women who are supported throughout.<sup>68</sup> Certainly if prosecution is going to

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<sup>65</sup> PPSC, section 28.3.

<sup>66</sup> PPSC, section 28.8.

<sup>67</sup> Weisz, 3.

<sup>68</sup> Weisz, 10.

empower, support for victims is necessary considering how other women report the delays and complications as being “torturous.”<sup>69</sup> Given the Inuit’s historical relationship with the justice system, there are questions as to whether the same gains in empowerment can be made in the courts. Celebrating success in the settler court system is essentially celebrating the system itself, which is implicitly a rebuke to aboriginal tradition.

The other dimension to prosecution is what it does to the abuser. Very likely being prosecuted by the official court system is un-empowering for men. The Royal Commission on Aboriginal Peoples stated that the humiliation and frustration that comes from the inequality between aboriginal and settler peoples is one factor that causes gendered violence.<sup>70</sup> It stands to reason a man who is incarcerated because his partner sought out recourse from the settler justice system is likely to feel only more humiliation and frustration. One of the reasons identified as to why Inuit men abuse is that they lack respect for things they consider to be in the women’s domain, including their pain.<sup>71</sup> Spending time immersed in a legally gendered space like prison seems unlikely to change this. Unless highly effective counselling is provided, the goal of ending the violence is unlikely to be furthered by incarceration. Likely, it is only delayed, or if the partnership is permanently ended, to be transferred to another woman or the abuser turns the violence on himself.

## **The “Special Circumstances” of the Territories**

Interestingly, the PPSC Deskbook justifies its agency-reducing policies through the “special circumstances” of the territories. The specific reasons listed as to why the abused spouse has no say in whether prosecution takes place are: “a) the victim may have no access to the same types of support often found in southern Canada, such as emergency shelters or

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<sup>69</sup> Ibid.

<sup>70</sup> Bisson, 4.

<sup>71</sup> Pauktuutit Inuit Women’s Association, 6.

counselling services; b) the victim may face pressure in the community not to report the crime; and c) absolute prohibitions on contact with the alleged abuser may be unrealistic in a small isolated community.”<sup>72</sup>

The three justifications cited are for the most part accurate. Nunavut only has three women’s shelters, with many women in the west of the territory seeking refuge in Yellowknife’s shelter.<sup>73</sup> Nunavut’s communities are certainly very small and people who have worked to encourage women to report domestic violence have experienced hostility from some community members.<sup>74</sup> Domestic violence is very likely underrepresented,<sup>75</sup> though the phenomenon of underreporting is not unique to Nunavut however. With these facts in mind, the question is whether these special circumstances nullify Nunavut’s other unique characteristics? Anti-colonial theory would suggest this is not the case. All three territories have large aboriginal populations; Nunavut’s population is 83.6 per cent Inuit. Having No-Drop prosecution aimed at the territories is a distinctly colonial measure. It means in the jurisdictions where the judicial institutions are the most foreign to the people they serve are also the jurisdictions where people have the least choice in whether those institutions mediate their problems. Alfred, who is clear that settler conceptions of justice are distinct from aboriginal conceptions of justice,<sup>76</sup> says that the colonial mentality “blocks recognition of the existence or viability of tradition perspectives.” Telling women that the settler legal system is the only way to resolve the power imbalance in their relationship furthers the colonial mentality, implicitly casts doubt on the validity aboriginal traditions and is a block to the creation of the supportive community Alfred thinks is essential to end Aboriginal men’s

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<sup>72</sup> PPSC, section 28.2

<sup>73</sup> Jane George, “Nunavut women fleeing violence fill half the beds at Yellowknife shelter”, *Nunatsiaq News* (30 September 2011) online: NunatsiaqOnline <<http://www.nunatsiaqonline.ca>>

<sup>74</sup> Genesis Group, *Family Abuse Intervention Act: Implementation Evaluation* (2009), 34.

<sup>75</sup> Bisson, 73.

<sup>76</sup> Alfred, 66.



violence. No-drop prosecution is a short-term solution that exacerbates a long-term problem.

## Part V. Family Abuse Intervention Act

Passed in 2006, the Family Abuse Intervention Act was the Nunavut Legislature's attempt to implement legislation that allowed an alternative to formal legal proceedings to address situations of domestic violence.<sup>77</sup> In addition to passing the bill, the government showed its commitment to attacking domestic violence in the territory by creating the position of Community Justice Outreach Worker (CJOW) in every hamlet to facilitate victims' use of the bill. The government's initial commitment makes it particularly depressing the bill is now considered by some to be a failure, and the government is viewed as neglecting the issue.<sup>78</sup> Anti-essentialists and anti-colonial lenses are helpful in understanding why the bill is held in such disrepute.

The Act creates a number of legal orders that can be sought, though only two have been used with any kind of regularity since the implementation of the Act.<sup>79</sup> The first kind, Emergency Protection Orders (EPOs) are designed for people in urgent situations. They can give the victim possession over the family dwelling and custody of the children, while putting a do-not-contact order on the abuser. Community Intervention Orders (CIOs) differ in that they bind the abuser and victim to attend traditional Inuit counselling with a specified traditional counselor. Finally, while rarely used,<sup>80</sup> Compensation Orders (Cos) allow victims of abuse to seek financial compensation for property damage caused by abuse, as well as costs incurred in fleeing violence. COs are notable in that most other jurisdictions don't have as robust ways of getting financial assistance to victims of abuse.

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<sup>77</sup> Genesis Group, 25.

<sup>78</sup> "Noble ends, bungled means", Editorial, *Nunatsiaq News* (13 March 2011) online: NunatsiaqOnline <<http://www.nunatsiaqonline.ca>>

<sup>79</sup> Genesis Group, 25-26.

<sup>80</sup> Genesis Group, 56.

While CIOs and COs represent novel court orders, the FAIA innovates in other ways. The act is clearly cognizant of the crowded living conditions many Nunavummiut live in. Recognizing Nunavut's housing shortage means that many are forced to live in close quarters with their parents, children or extended family, the Act is unprecedentedly broad in its definitions of who can avail themselves of it, defining family abuse as something that can take place among people in "intimate", "family" or "care" relationships.<sup>81</sup> The legislation's broadness is a clear signal to those implementing or enforcing the bill that they should be open to atypical abusive relationships, and represents a move away from essentialism in domestic abuse policy.

In addition to a broad array of orders available for a broad array of people, the FAIA is designed with a streamlined process for obtaining the orders. Given the urgency in many cases of domestic violence, the legislature wanted the orders to be quick and easy to obtain. To obtain an EPO or CIO a one page form must be filled out and faxed to the offices of the Justices of the Peace (JP). The office immediately sets up a time for an *ex parte* hearing, to be held over the phone.<sup>82,83</sup> If the JP is satisfied, the order is granted immediately. Within five days, the order is reviewed by a judge of the Nunavut Court of Justice. The judge either confirms the JPs decision, or orders a *de novo* hearing of the matter.<sup>84</sup> Respondents to the order have 21 days to request a review of an EPO granted by a Justice of the Peace.<sup>85</sup>

The legislature appears to have been cognizant that some victims of abuse would likely need help in filling out forms and selecting from the wide array of options available. The legislation specifies that family members, lawyers, RCMP officers and "prescribed

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<sup>81</sup> *Family Abuse Intervention Act*, S.Nu, 2006, c18, section 2.

<sup>82</sup> *Family Abuse Intervention Act*, section 7.

<sup>83</sup> Genesis Group, 15.

<sup>84</sup> *Family Abuse Intervention Act*, sections 15-16.

<sup>85</sup> *Ibid*, section 13.

persons” can all apply for orders with the consent of the applicants.<sup>86</sup> The regulations clarify that proscribed persons are those occupying the Community Justice Outreach Worker position and those working at shelters.

## Evaluation: EPOs

The design of the Emergency Protection Orders offers some promise for respect of women’s agency. For example, the process of getting an EPO appears to allow a woman to avoid involving the RCMP if she wishes. If she has the knowledge and the capability, she can fill out the forms herself, avoiding contact with all government officials, save for the hearing with a Justice of the Peace. If she doesn’t have the capabilities, the CJOW exist (in theory<sup>87</sup>) to help her select the restraints she wants against her partner. Ignoring all colonial dimensions that are still in place, the experience might be considered empowering.

Unfortunately, practice does not match up with theory. The problem with EPOs is that they likely endanger the safety of the women they are meant to protect. In American jurisdictions that have civil protection orders, a large proportion of domestic violence occurs after restraining order has been delivered.<sup>88</sup> Women who have been separated from their abusive partner are also more likely to be victims of homicide than before the separation.<sup>89</sup> The theory behind this violence is that abusers see their victim’s obtaining of a civil order as an assertion of independence. The offered reacts by trying to reassert his power over his victim, usually through violence.

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<sup>86</sup> Ibid, section 26(b).

<sup>87</sup> For various reasons that go beyond the scope of this paper, the Community Justice Outreach Workers are reported to be largely a failure. They’ve been found to lack support or supervision (Genesis Group, 32), that they don’t understand their duties (Genesis Group, 36) and that this ignorance of the *Family Abuse Intervention Act* by the CJOWs has hurt community awareness of the Act as well (Genesis Group, 6).

<sup>88</sup> Goodmark, *Troubled Marriage*, 83.

<sup>89</sup> Ibid.

There are many factors that suggest that the problem could be just as bad or worse in the Nunavut. Firstly, in theory, the EPO judgment is delivered to abuser by the RCMP. This could bring up the humiliation associated with settler-dominance of the justice system. Secondly, given the small size of many Nunavut communities, the idea of avoiding contact is impractical. Beyond that, enforcement of the orders is an issue. There might be two RCMP officers in a town of 300. How they are supposed to protect a woman against a partner wishing to reassert his power is unclear. Talking about EPOs and probation orders, one Nunavut resident interviewed put it concisely: "None of that paper stuff works...it's just paper and means nothing."<sup>90</sup> Clearly government orders alone can't divest abusers of their power.

Making matters worse, Nunavut does not appear to have the administrative capacity to effectively enact the EPOs. Most notably it appears the EPO orders have not been added to the information available to the RCMP,<sup>91</sup> meaning the RCMP has been charged with enforcing orders they don't know exist. There have also been problems with EPOs that grant the victim exclusive use of the home. There have been at least three cases of women being ejected from houses they were granted exclusive use of, because their names were not on the lease, and public housing authorities claimed no knowledge of the provisions about housing in the FAIA.<sup>92</sup> There have also been conflicts between social workers and women who have been granted exclusive custody of their children through EPOs.<sup>93</sup> Considering that the FAIA is clear that EPOs take precedent over the Child and Family Services Act, the Children's Law Act, the Family Law Act and the Divorce Act (Canada)<sup>94</sup> these incidents speak of poor implementation and awareness of that Act more than poor drafting.

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<sup>90</sup> Genesis Group, 56.

<sup>91</sup> Genesis Group, 50.

<sup>92</sup> Genesis Group, 58.

<sup>93</sup> Ibid.

<sup>94</sup> *Family Abuse Intervention Act*, section 9.

## Evaluation: CIOs

There is much to praise about Community Intervention Orders. They represent an anti-essentialist innovation in dealing with domestic abuse. Firstly, CIOs provide a relief for women in abusive relationships that does not involve the separation of the parties. EPOs assume that a woman wants to leave the relationship, but are only hindered by obstacles like concerns about children, housing, money and the abuser himself. CIOs respect that even with options to take care of those matters, a woman may have other goals (like maintaining the marriage, not disrupting her social circle, or giving her children a father) that she wishes to pursue even at the cost of her safety. By providing women with a remedy that is not separation-based, their agency is respected. There is evidence to suggest this may be a more appropriate approach for the Nunavut context. The government commissioned report of the FAIA says that women who get a EPO usually get back with their partner within two or three days regardless of the order.<sup>95</sup>

CIOs are also important because they represent something of a legislative recognition that women stay in abusive relationship. Women who stay in abusive relationships are often treated with skepticism when communicating their situation to the judges, the police, or prosecutors, all of whom may work on the assumption that if a woman is not trying to leave a relationship abuse is not actually happening.<sup>96</sup> While legislative recognition of a fact is unlikely to change assumptions on its own, it represents a positive step.

While there are theoretical positives to CIOs, there are also some large practical problems. Given the often tragic results of civil protection orders, CIOs may represent a safer option for women. However, this is far from certain. In the American context, some women's experience has been court-ordered counselling only enraged their partners, resulting in more

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<sup>95</sup> Genesis Group, 56.

<sup>96</sup> Goodmark, *Troubled Marriage*, 81.

abuse.<sup>97</sup> While there have been no reports of counselling-inspired violence in Nunavut, CIOs appear to have been largely ineffective.

The first issue appears to be low use of the orders. From 2008 to 2010, there were 22 applications for CIOs, but only 7 were granted.<sup>98</sup> The low amount of requests is explained by the very low level of awareness of the FAIA in Nunavut, and the ineffectiveness of the CJOWs. The fact only a third of requests were granted raises questions. The government-requested report on FAIA describes the low rate of successful CIO applications as being outside the scope of the study, only explaining it as being caused by “sociological issues, personal considerations, and the application of legal theory.”<sup>99</sup> The lack of detail is frustrating. Sociological issues could be a reference to essentialist ideas like cycle of violence or learned helplessness, but without more detail, it would be improper to make assumptions.

The second issue with how CIOs is that the “specified traditional Inuit counselor” the legislation makes reference to is undefined, and isn’t an institution that formally exists. The government-commissioned report on FAIA makes it clear that Nunavummiut doubt that Inuit elders have the ability to effectively counsel domestic violence. Some of the report’s informants even went so far as to suggest that elders might condone physical discipline of a wife by her husband.<sup>100</sup> At the same time, elders expressed an unwillingness to get involved in “family issues.”<sup>101</sup> The obvious comment on this issue is that the government of Nunavut thought it could have its legislation embrace traditional values at the same time as off-loading the cost of employing counselors. It is unnecessary to decide whether this was calculated or if it came from an optimistic naïveté on the part of the government.

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<sup>97</sup> Goodmark, “Reframing Domestic Violence Law and Policy, 14.

<sup>98</sup> Genesis Group, 51.

<sup>99</sup> Ibid, 52.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid, 5.

Using Alfred's theory however, there is more to be uncovered by looking at CIOs than simply poor governance. One more comment about traditional counselors from one of the FAIA report brings the government's mistake to light: *"The elders were beaten or beat up people themselves – who wants counselling from those people?"*<sup>102</sup> Elders inside Inuit communities have been colonized just as much as anyone else. This has two outcomes. The first is that the healers need healing themselves, but also "communities lack the solid, well-defined cultural roles for elders and traditional teachers that ...aid in the transition of knowledge and meaning."<sup>103</sup> By pointing abusive relationships to elders, the government heavy-handedly tried to recreate institutions that no longer exist.

Alfred urges a more dynamic revitalization process. He allows that without the role for elders the task for adapting and transmitting traditional wisdom should fall to scholars, writers and artists. In the domestic violence context this would mean that counselors of a more professional nature are not necessarily a mark of colonization. Embracing the traditional wisdom does not mean that it must take the same form.

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<sup>102</sup> Genesis Group, 51.

<sup>103</sup> Alfred, 171.



## Part VI. Rankin Inlet Spousal Assault Program

Started in 2007, the Rankin Inlet Spousal Assault Program (RISAP) is Nunavut's only spousal abuse counselling program.<sup>104</sup> The initiative is a pre-sentencing program, meaning that the program is available to those in the hamlet who have been charged with a domestic assault and have entered a guilty plea. If they successfully complete the program, the prosecution and defense ask for a conditional discharge as the sentence.<sup>105</sup> It also provides counselling to those who have been victims of spousal abuse and does outreach work to build awareness of family violence issues in the community.

The approach the program takes with offenders is a mixture of traditional knowledge and more conventional counselling. Offenders attend both individual counselling sessions and group counselling sessions. Elders are often invited to the group counselling sessions to talk about resolving disputes without violence and family life, as well a focus on instilling pride in traditional ways and boosting self-esteem.<sup>106</sup> Elders who participate with the program are also available to provide guidance on issues besides family violence after the program is finished.<sup>107</sup> Interestingly, just like the FAIA experience with elders providing counselling, there were initial problems with elders not condemning all forms of spousal violence. The problem was solved by one of the program's professional counselors clarifying with the participating elders their role and the program's stance on spousal violence. The positive role the elders have played in the program since the intervention speaks to the fact that though elders have been colonized, it is not an insurmountable obstacle to their participation in the program, it is merely a fact that has to be acknowledged and addressed.

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<sup>104</sup> Department of Justice, Evaluation Division, Policy Integration and Coordination Section, *Rankin Inlet Spousal Assault Counselling Pilot Program Final Evaluation* (February 2009), 1.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*, 29.

<sup>107</sup> *Ibid.*

## Evaluation

The program is in line with the six values of the battered women's movement and appears to acknowledge the realities of spousal abuse. There is no push for separation of the spouses and most couples do stay together during the program.<sup>108</sup> Counselling for the victims is available whether she stays with her spouse or not.<sup>109</sup> Consequently, women's agency is being respected in the way that solutions that demand separation do not. The program may also help build agency: most of the victims became employed or started a skills-enhancing program while attending the counselling.<sup>110</sup>

The fact the abusers may avoid jail time by completing the program is not necessarily contrary to the goal of holding perpetrators accountable. The program stresses that the offenders recognize themselves as an offender who is being held accountable for their actions.<sup>111</sup> Being made to tell stories of the abuse they perpetrated is a form of accountability<sup>112</sup> and it could be argued to be a superior form of accountability than imprisonment, where the perpetrator does not have to address the reason for his incarceration.

In terms of stopping the violence, the program appears to be a success. Of 28 people who attended some of the program, only two were subsequently charged with assaults, and both of those individuals had not completed the entire program.<sup>113</sup> One assault took place in

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<sup>108</sup> Ibid, 7.

<sup>109</sup> Ibid, 10.

<sup>110</sup> Ibid, 33.

<sup>111</sup> Ibid, 7.

<sup>112</sup> Goodmark, *Troubled Marriage*, 182.

<sup>113</sup> Department of Justice, 4.

public against another male, while the other was the homicide of the original complainant.<sup>114</sup> While acknowledging this dreadful fact and recognizing it illustrates the high-stakes nature of these programs, RISAP appears to be highly successful.

Statistical analyses of counselling programs in the American context have found that 40 per cent of men who attend battering intervention programs cease battering, while 35 per cent of men who have been charged with a domestic assault and who receive no treatment stop battering.<sup>115</sup> In other words, those who receive intervention show only a marginal improvement over those who don't. At the moment, the data related to RISAP is far from conclusive. It has a sample size of only 28, and comes only two to four years after the men completed the program. It is worth noting however, that compared to the meager improvement American intervention programs have shown, there must be something about the men receiving the counselling, or the counselling they are receiving that sets RISAP apart from other intervention programs.

With positive results, it is tempting to avoid finding fault. However, Alfred's thinking pushes for a more critical evaluation of these programs. For Alfred, the first step to ending the internal colonialism that causes domestic abuse is to create awareness of the pain's source. A review of the curriculum of the group sessions for abusers' shows the program does not emphasize this point. Most of the sessions deal with either anger-management techniques like time-outs, knowing your warning signs and awareness of stressors, or more abuse-centered activities like debunking excuses for spousal abuse, and even a session centered on the cycle of violence.<sup>116</sup> The closest that the program's group counseling comes to raising awareness of the pain's source is sessions where abusers write their life story with

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<sup>114</sup> Ibid, 31.

<sup>115</sup> Goodmark, *Reforming Domestic Violence Law and Policy*, 12.

<sup>116</sup> Pulaarvik Kablu Friendship Center "Spousal Abuse Counseling Program: Manual For Counselors, (2006), 55.

special attention to the losses suffered.<sup>117</sup> While some may draw the connection between their losses and the colonial experience, the program does not broach the subject.

While administered by Pulaarivik Kablu Friendship Centre, the funding for the pilot project was provided by Nunavut and Canada's justice departments, as well as Public Security and Emergence Preparedness Canada. The dependence on colonizing government structures explains the lack of any decolonizing themes to the curriculum. Nonetheless, the program might not be a complete failure to Alfred's vision of ending violence through decolonization. The program does encourage the development of a supportive community, by bringing abusers together in frank discussions, creating a place for elders to advise those who need it, and trying to facilitate a greater connection between spouses. An infrastructure for a political project is created, even if political content is absent from the project.

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<sup>117</sup> Ibid, 114.

# Conclusions

In Inuit mythology one of the most important figures is Sedna, the goddess of marine mammals. As marine mammals are an important source of food and skins for the Inuit, good relations with Sedna are key to the Inuit's survival. Though there are many versions of the story, there is a basic pattern of a young woman who is "mistreated, and then sacrificed for selfish reasons."<sup>118</sup> One version of the story tells of a woman who rejects her suitors, but is wooed by the spirit of a fulmar<sup>119</sup> who promises to take her to his lavish and well stocked home. Upon arriving the woman finds she was deceived. She is fed only fish and lives a miserable life in a drafty tent. The woman's father eventually hears of her situation and attempts to rescue her. The two attempt to escape by boat, but are caught by a swarm of fulmars. In an attempt to placate the birds, the father throws his daughter out of the boat. When she clings to the side, he uses his knife to cut off her fingers. As they fall in the ocean, the fingers became the sea mammals, and the woman becomes Sedna, "the woman who lives at the bottom of the ocean."

Anyone who has been following Nunavut's attempts to eliminate domestic violence in the territory may see some parallels between the efforts of the father in the story, and the efforts of the government. An initial effort to save a woman in a bad relationship meets with adversity and ultimately ends in betrayal. There are several examples to support this analogy: The government commissioned a report to evaluate the Family Abuse Intervention Act and received a largely negative report in February of 2010. Rather than act, the government waited until March 2011 to even table the report in the legislature.<sup>120</sup> It is alleged that the government is delaying new legislation until after the next election to avoid generating

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<sup>118</sup> Neil Christopher, *Kappianaqtut: Strange Creatures and Fantastic Beings from Inuit Myths and Legends Volume 1* (Canada: Inhabit Media, 2011), 21.

<sup>119</sup> A northern sea bird.

<sup>120</sup> Jane George, "Report: Nunavut family abuse 'failing'", *Nunatsiaq News* (11 March 2011) online: NunatsiaqOnline <<http://nunatsiaqonline.ca>>

controversy.<sup>121</sup> In a similar vein, the positive results of the Rankin Inlet Spousal Abuse program have been known since 2009. Yet neither the Canadian nor Nunavut governments have made any movements towards replicating the program in other communities. Finally, highlighting how prevalent the problem of domestic violence is in Nunavut, the Member of the Legislative Assembly (MLA) for Pangnirtung was suspended in 2011 because charges of spousal assault had been laid against him.<sup>122</sup> While he later resigned, it raises the question of the fitness of those who are supposed to develop solutions to the territory's problems.

For those who feel applying a feminist lens to the problem is sufficient and Alfred's political prescriptions are unnecessary, the way forward is not far from reach. The first solution is likely to elect more women or people willing to prioritize the issue to the Nunavut legislature. Currently there are only three female members of the nineteen-member body. From there, the government could work at expanding the program offered in Rankin Inlet. Having formal counselors employed by the government could also be used to correct the poor functioning of the Community Intervention Orders of Family Abuse Intervention Act. The hope is with dedicated political capital, eventually programs that bring perpetrators in contact with counselors through diversion programs, CIOs or public awareness campaigns could be implemented in all communities. While poverty and sexism would still need to be addressed, and the government's current difficulties building its own administrative capacity would need to be addressed, eventually the widening spiral of violence that currently exists would begin to shrink and a new day would begin for Nunavut.

For those who accept that decolonization is an important factor in ending domestic violence in Nunavut, the path forward is less clear. Perhaps the widest gulf between the

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<sup>121</sup>Mad Mom, "Nunavut government stalled family violence strategy, Mad Mom says", Letter to the Editor, *Nunatsiaq News* (26 October 2012) online: NunatsiaqOnline <<http://www.nunatsiaqonline.ca>>

<sup>122</sup>Jane George, "Nunavut MLAs vot to suspend Adamee Komoartok", *Nunatsiaq News* (10 March 2011) online: NunatsiaqOnline <<http://www.nunatsiaqonline.ca>>

feminist and anti-colonial lenses is the latter's major objection to the legitimacy of government. While the analysis above shows feminism take a critical eye towards government institutions, decolonization goes beyond. Alfred is clear he believes indigenous governments that conform to settler-expectations will by design "undermine, divide and assimilate indigenous people [and that] those who achieve power run the risk of becoming instruments of those objective."<sup>123</sup> If the MLAs are vulnerable to co-option, their slowness to address the problem is understandable: the state structure they belong to does not prioritize the needs of aboriginal women, and is unlikely to look favorably on solutions that divest the state of power over individuals. If part of the cause of domestic violence is the disempowering authority of the colonial state, then the Nunavut legislature is not the ideal body to rectify the problem.

For those who agree that counselling individuals who have committed domestic violence is not enough, and that the anger and shame of the community need to be addressed, counseling programs won't suffice. The solution is restorative justice institutions that come from, and are administered by the communities. Settler institutions that perpetuate colonial mentalities with need to be replaced with ones that encourage respect and reinvigoration of aboriginal traditions. These institutions represent restorative justice, not only for the victims and perpetrators, but through the decolonizing process of building them, for the community as a whole.

If a decolonized justice system is the goal, the starting line has already been crossed in Nunavut. Community Justice Committees exist in some communities, where a counsel of elders takes diversions from the RCMP for some youth and misdemeanor charges. The committees involve the accused, the victim and the community, and find solutions using Inuit

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<sup>123</sup> Alfred, 54.

principles like inclusiveness and co-operative decision-making.<sup>124</sup> Nunavut's former chief justice Beverley Browne has stated that courts are not adept at dealing with domestic violence, and that Community Justice Committees might be better suited.<sup>125</sup> To get to that point, the committees will have to increase their administrative capacity, prepare themselves to interact with more serious matters, increase their legitimacy in the community and solve hundreds of other problems. They will all be difficulty tasks. On top of these challenges, the RCMP's diversion policies will have to be challenged and changed. What decolonizing theory suggests however, is the process of rising to these challenges may be as beneficial to community as the institution itself.

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<sup>124</sup> Department of Justice, Research and Statistics Division, *Review of Nunavut Community Justice Program: Final Report*, (2004), 12.

<sup>125</sup> *Ibid*, 34.



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