

#ColonialRuleofLaw

Cindy Blackstock Twitter Learning Series

February 27, 2020 | Presented by **Cindy Blackstock**



First Nations Child & Family
Caring Society of Canada

Société de soutien à l'enfance
et à la famille des Premières Nations
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#ColonialRuleofLaw #ColonialRuleofLaw

In February of 2020, Dr. Cindy Blackstock, Professor of Social Work at McGill University, tweeted 25 consecutive learning resources regarding “Rule of Law” and how it is ingrained in historic and contemporary colonialism.

Colonial Rule of Law #C
The resources included in this learning series are not intended to present an exhaustive review. Instead, the series is intended to inspire people to continue learning about Canada’s relationship with First Nations, Inuit and Métis peoples and the colonial use of “Rule of Law”.



What does the rule of law mean in a western sense?

Aristotle “it is more proper for the law to govern than any one of the citizens.”

The World Justice Project has 9 “rule of law” principles to think about.

WJP Rule of Law Index

The four universal principles are further developed in the following nine factors of the annual [WJP Rule of Law Index](#). The latest edition of the Index relies on more than 120,000 household and 3,800 expert surveys to measure how the rule of law is experienced and perceived in practical, everyday situations by the general public worldwide. Index findings have been cited by heads of state, chief justices, business leaders, and public officials, [including coverage](#) by more than 1,000 media outlets worldwide.



[Constraints on Government Powers](#)
(Factor 1)



[Absence of Corruption](#)
(Factor 2)



[Open Government](#)
(Factor 3)



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(Factor 8)



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Additional resources:

[American Indians Confront "Savage Anxieties" | Season 3
Episode 52 | Moyers & Company](#)



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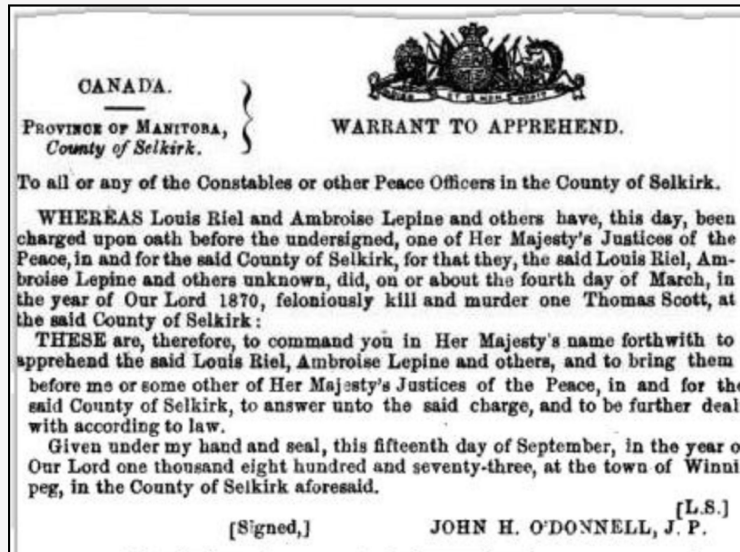
RESOURCE

1



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As Louis Riel resisted colonialism, John A. MacDonald relied on the "rule of law" to fix Riel's trial & presiding judge Justice Hugh Richardson rejected the jurors' appeal for mercy by sentencing Riel to death by hanging. The rule of law was the rule of injustice. Similar today. #ColonialRuleOfLaw



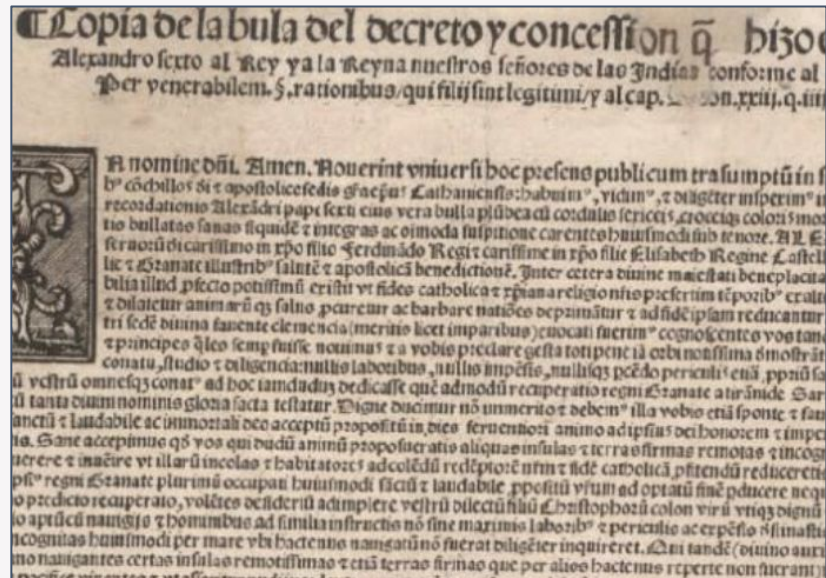
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In 1493, Pope Alexander VI issued the Papal Bull Inter caetera granting Spain land & trading rights to the places "discovered" by Columbus so long as said lands were not occupied by Christians. It still gets cited.
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RESOURCE

2



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RESOURCE 3



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"You did not exist until I 'discovered' you and you were not human so you could not own land so I took it. And I took you." That is the Doctrine of Discovery in a nutshell. It is threaded in U.S. and CDN law and governance. #ColonialRuleOfLaw



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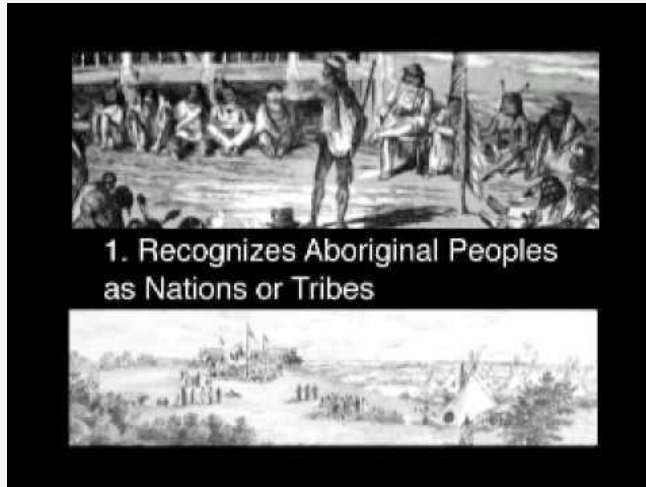
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In 1763, King George III issued a Royal Proclamation. It recognized Indigenous land rights, saying treaties were needed to acquire land. The treaties were the 1st land contracts but the Crown/Canada did not fully honour them. #ColonialRuleOfLaw



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Also important to recognize that treaties were not signed for vast tracks of land in Quebec, British Columbia and other areas.

RESOURCE

4




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RESOURCE 5



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Racism is in the DNA of national law. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by the Creator with certain inalienable rights.." & then "the merciless Indian savages" US Declaration of Independence.
#ColonialRuleOfLaw

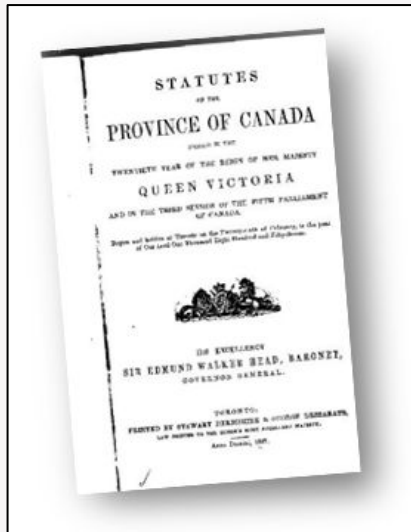
He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.





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"You are an Indian (man), but you can become "civilized" if I think you are." That is the ethos underlying the Canadian Colony's 1857 Gradual Civilization Act. Many of its provisions would be ingrained in the Indian Act. #ColonialRuleOfLaw



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RESOURCE 7



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13 yrs ago today we filed a legal case v. Canada on inequitable services for First Nations kids. In 2016, the Tribunal ordered the Feds to stop discriminating. 9 non-compliance orders followed. 1000's of kids unnecessarily separated from families & some died. #ColonialRuleOfLaw

[231] The Panel finds that Canada's conduct was devoid of caution with little to no regard to the consequences of its behavior towards First Nations children and their families both in regard to the child welfare program and Jordan's Principle. Canada was aware of the discrimination and of some of its serious consequences on the First Nations children and their families. Canada was made aware by the NPR in 2000 and even more so in 2005 from its participation and knowledge of the WEN DE report. Canada did not take sufficient steps to remedy the discrimination until after the Tribunal's orders. As the Panel already found in previous rulings, Canada focused on financial considerations rather than on the best interest of First Nations children and respecting their human rights.

[234] The Panel finds it has sufficient evidence to find that Canada's conduct was wilful and reckless resulting in what we have referred to as a worst-case scenario under our Act.

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[235] What is more, many federal government representatives of different levels were aware of the adverse impacts that the Federal FNCFS Program had on First Nations children and families and some of those admissions form part of the evidence and were referred to in the Panel's findings. A review of the Panel's findings contained in the *Decision* and rulings supports this.



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The case is still ongoing. The paragraphs in the post above are from a ruling issued in September 2019. The Tribunal found that Canada's discrimination towards the kids is still ongoing. The PM and Ministers say it is "in the past."



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If you don't believe it or want to learn more, read all of the legal submissions, including those filed by Canada, and the rulings by the Tribunal, Federal Court and Federal Court of Appeal at: www.fnwitness.ca





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The gov't says if you are an Indian or not. Your land is in trust of the Queen- you own nothing & even your will can be changed by the gov't. It imposes band councils, & the feds control public services. This is the Indian Act. It is still in effect. #ColonialRuleOfLaw

Indian Act (R.S.C., 1985, c. I-9)
 Full Document: HTML (Accessibility Buttons available) | XML (283 KB) | PDF (566 KB)
 Act current to 2020-01-27 and last amended on 2019-08-15. [Previous Versions](#)
 Notes: • See coming into force provision and notes, where applicable.
 • Shaded provisions are not in force. [Help](#)

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Important to note that the Indian Act is applied by Canada to a First Nations. It is not applied to Inuit or Métis so avoid using the umbrella terms “Aboriginal” or “Indigenous” when referring to it.

RESOURCE

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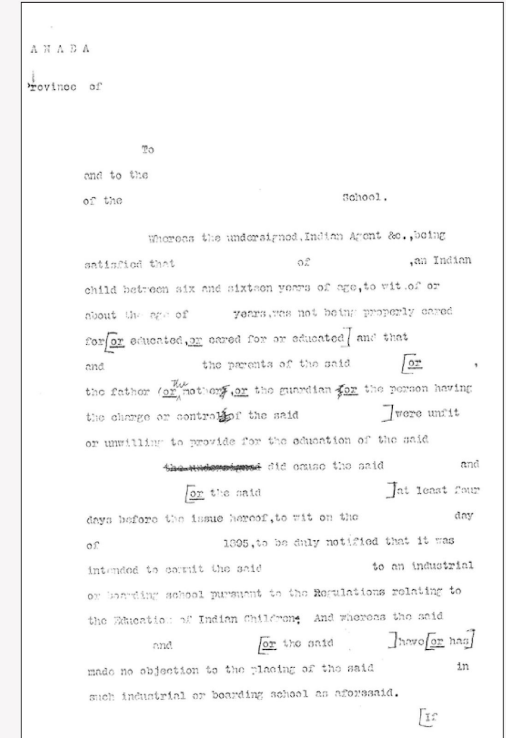
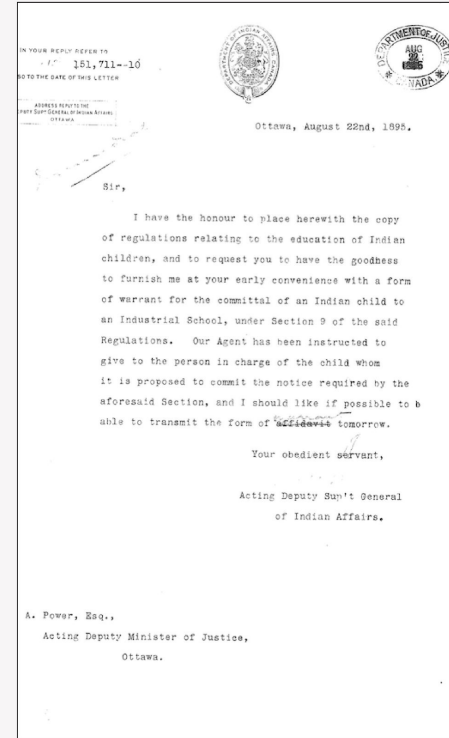
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RESOURCE 9



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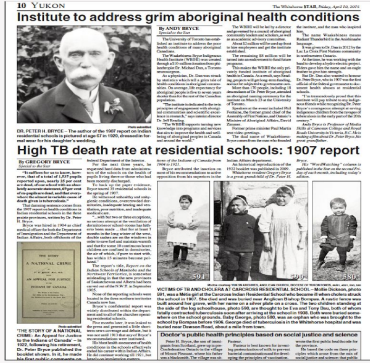
In 1895 the Dept of Justice wrote this warrant to remove "Indian" children from their families for "education" or because of colonial views that they were "not properly cared for." The Indian Agent would write the name of the child in the blank and take them. #ColonialRuleOfLaw





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In 1907, Dr. Bryce, raised the alarm on how unequal health care & bad practices in residential schools = staggering death rates of children like those pictured below. The feds said it cost too much to fix. In 1920 attendance at the schools became mandatory. #ColonialRuleOfLaw



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Here are the names of 2800 children who died in the schools. The TRC estimated that 4-6 thousand children died there due to abuse and preventable disease.



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RESOURCE 11



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Between 1927-1951, the Indian Act outlawed "Indians" from hiring legal counsel, gathering in groups of 3 or more, and raising funds. Learn more about this oppressive law that is still on the books...#ColonialRuleOfLaw

THE INDIAN ACT
SAID WHAT?

The *Indian Act* was created to control and assimilate Indigenous peoples and their communities. Throughout history, a number of shocking and discriminatory measures have been in place.

- 1876**
The *Indian Act* is created. Any existing Indigenous self-government structures at this time are *extinguished*.
An Indian is defined as "any *male person of Indian blood*" and their children. Provisions include: status women who marry non-status men lose status; non-status women who marry status men gain status and anyone with status who earns a degree or becomes a *doctor, lawyer or clergyman* is also enfranchised.
- 1880**
Though not a law but a policy, Indigenous farmers are expected have a *permit* to sell cattle, grain, hay or produce. They must also have a permit to buy groceries and clothes.
- 1884**

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Indigenous persons in the Canadian military received hundreds of medals for bravery, yet were denied veterans' benefits & some First Nations veterans lost their Indian status as they were not "citizens" until 1960. #ColonialRuleOfLaw

First Nations soldiers and veterans have an honourable and proud history of military service. Treaty and status Indians have the highest per capita participation rate of any ethnic group from Canada in both world wars. First Nations veterans made many sacrifices. Some made the ultimate sacrifice in giving their lives for this country, but there were other sacrifices.

In some cases First Nations veterans were encouraged to enfranchise, meaning they were encouraged to renounce their status to join the Armed Forces. Some First Nations veterans even lost their Indian status when they joined the military. They lost all their rights and benefits that come with that status. This is an important and unrecognized sacrifice made by our veterans.

Our veterans fought wars for the Crown and for democracy, yet they encountered systematic and inequitable treatment when those wars were over. In particular, the federal government provided benefits to non-First Nations veterans that were not made available or not made easily accessible to First Nations veterans, such as land grants, education, retraining and loans. In some cases, First Nations lands were expropriated to compensate non-First Nations veterans.

On the battlefield, First Nations and non-First Nations soldiers stood side by side. They fought as equals and in some cases died as equals. However, once they landed on the shores of Canada, First Nations soldiers were quickly relegated to second-class status.

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RESOURCE

12



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RESOURCE 13



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It began as a "temporary" security measure but lasted 60 years. First Nations in the west had to get a "pass" from the Indian Agent to leave the reserve.
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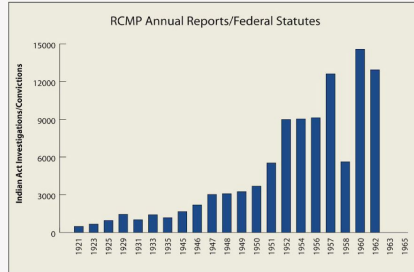
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The RCMP enforced the Indian Act & laws like the Family Allowance Act cutting \$ when families failed to send their kids to residential schools. They enforced ceremony bans and tracked down residential school "truants." They enforced unjust laws without question. #ColonialRuleOfLaw

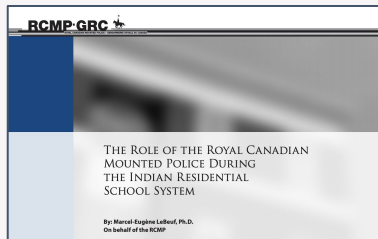


The RCMP was also involved in many activities pertaining to the social control of Aboriginal people. For example, between 1873 and 1900, the RCMP provided assistance, among other activities, to enforce the pass system or the ban on liquor or dances upon request from the Indian Agents. The Indians themselves had little to say about the process, wrote McCaskill (1983:289). They were active in supporting the ban on dances during the 1920's, where it is said that "the RCMP conducted raids and confiscated paraphernalia . . ." (Dickason, 2002:30). In order to avoid the RCMP control "Indian communities were to take the potlatch to secluded places beyond the reach of the RCMP. On more than one occasion, elders were arrested, and even imprisoned, for participating in a potlatch", concluded Mathias, Yabsley (1987: 38). The RCMP had the power to declare destitution and did so according to Milloy's accounts from the 1950's (1999:242; Miller, 1996). They helped to take x-rays, which sometimes created a feeling of fear: "I remember being frightened of the RCMP because at that time it was compulsory to get x-rays. The police would gather people for their x-rays, but we little kids would hide" (Fontaine, 1993: 56).



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Note the RCMP say they were largely unaware of the abuse at the schools as clergy and Indian Affairs rarely reported cases and kids who were sometimes forced to go to the schools by RCMP didn't trust them to report.



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RESOURCE

14



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RESOURCE 15



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Lawyers & the Dep't of Justice riddle colonialism. They denied First Peoples laws, wrote treaties so they could break them; gave authority to residential schools & profited off of survivors. Many still oppress First Peoples' rights #ColonialRuleOfLaw

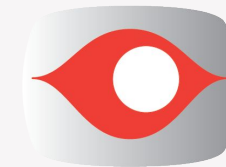


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For positive movements to affirm First Peoples law and justice check out the @IBA_Canada and the great pro-bono work of @CaringSociety counsel to get equitable services for First Nations kids: www.fnwitness.ca



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Cindy Gladue was a mom murdered in Alberta. At trial, they called her "Native" or "prostitute" over 50 times & the Crown brought her pelvic tissue into the courtroom. The suspect was acquitted. In 2019, the SCC ordered a new trial. #ColonialRuleOfLaw



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To make matters worse, the Supreme Court found that previous trials were botched so badly that the most serious charge the suspect can be charged with now is manslaughter.

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RESOURCE 17



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On Sept. 6, 1995, unarmed lands rights defender, Dudley George was shot to death by the OPP at Ipperwash Park. 12 years later an inquiry found the OPP, Ontario Premier Harris and the Federal gov't responsible for his death.
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I had a dream the other night. I was being chased by people onto a shore, and people were trying to grab me. A man grabbed me by the forearm, and the pipebowl I was carrying fell on a rock and shattered. But when I picked it up, it was whole again. I talked to my Elders about what this meant. They told me: That pipebowl represented your brother, and the people chasing you represented all those who wanted your people out of the Park. When those people finally got you and the pipebowl fell and shattered, that was the shot that killed Dudley. That shock – that went straight across the country. When you picked it up and it was whole, the First Nations people united and came back together. A sign that the people were there behind you. This speaks of First Nations people being unified in the aftermath, more than ever.

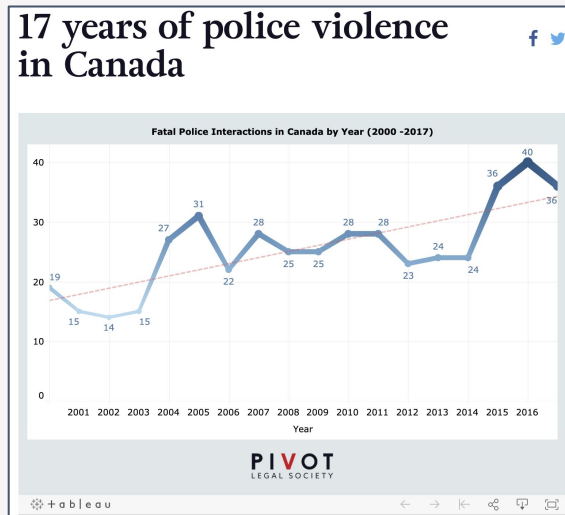




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According to the CDC, Native Americans in the US are more likely to be killed by law enforcement than any other racial group. Pivot Legal Society says the same is true for Indigenous Peoples in Canada. #ColonialRuleOfLaw



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RESOURCE 19



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In 1990, Oka Mayor Ouelette OK'd a development on a Kanesatake cemetery despite community protests. The police & CDN army were sent in sparking a 78 day crisis. The army stabbed a 14 yr old girl & an officer died in botched raids.
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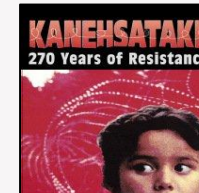
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Waneek Horn Miller went on to be an Olympian and social justice champion and Officer Lemay's sister responded to his death in this way:



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You can learn more by watching Alanis Obomsawin's documentary



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Traditionally, First Nations were often governed by women. The Indian Act barred women from office & said their kids were not First Nations if the father was non-status. Sharon McIvor fought the discrimination and won but it persists. #ColonialRuleOfLaw



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While First Nations women can now hold elected office under the Indian Act, the struggle to reaffirm their traditional & elected leadership roles continues. There has never been a female National Chief of AFN.

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RESOURCE 21



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On August 9, 2016, Gerald Stanley shot & killed 22 year old Colton Bushie. A botched investigation & trial followed where every potential Indigenous juror was excused. Stanley was acquitted; Colton's family still seeks justice.
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The feds had 11 million for Jordan's Principle but said no one needed it. In 2013, single mom Maurina Beadle went to court to get help for her son while recovering from a stroke. She won. Canada wanted Maurina to pay their legal fees. #ColonialRuleOfLaw

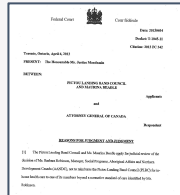


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Read the ruling here. The federal government appealed and wanted Maurina to pay their legal fees. They only dropped the case after significant public pressure. Maurina's case set the first legal precedent for Jordan's Principle.



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After the Canadian Human Rights Tribunal's 2017 non-compliance order forced the Feds to finally implement Jordan's Principle, First Nations kids received over 2 Billion worth of services and products last year. Maurina's case was cited in the CHRT rulings.



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In 2019, Maurina signed on to a class action to seek justice for her son and other children denied services under Jordan's Principle. She tragically died before the case could go to court but the litigation continues.

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RESOURCE 23



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In 2019, the Feds announced national child welfare legislation saying it would be co-developed. They then rejected a First Nations draft law & insisted on using theirs. Compare: Canada's Act <https://bit.ly/3cPiIVD> & the F.N. draft: <https://bit.ly/3cSjKaf>
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CSF's November 5, 2016 WORKING DRAFT FOR DISCUSSION PURPOSES ONLY

First Nations Child and Family Caring Act

An Act respecting First Nations to exercise jurisdiction over all child and family matters for their members, operate their own institutions, and administer income protection and protection programs and services based on their own respective laws, customs, practices, and #999999.

Preamble

WHEREAS the Government of Canada has fully adopted, without reservation, and agreed to implement the United Nations Declaration on the Rights of Indigenous Peoples, A/RES/69/51;

AND WHEREAS the Act of the Declaration provides a framework for reconciliation, and specifically recognizes the Indigenous peoples, in exercising their right to self-determination, have the right to self-government in matters relating to their affairs, including Indigenous children and families;

AND WHEREAS the Government of Canada recognizes the inherent rights of self-determination and self-government of Indigenous peoples, and the corresponding right of First Nations to exercise jurisdiction and authority over matters involving First Nation children and families;

AND WHEREAS the Government of Canada recognizes that jurisdiction and authority over matters involving Indigenous children and families are the core of Indigenous self-determination and self-government;

AND WHEREAS the Government of Canada recognizes that First Nations are best suited to make decisions for the well-being of their children and families;

AND WHEREAS the creation of child and family service regimes for First Nation members, and the administration of those regimes through First Nations institutions, based on First Nations' traditions, customs, and self-governance, is a essential part of Indigenous peoples' inherent right to self-government and self-determination;

AND WHEREAS the creation of First Nation child and family service regimes and a First Nation Child and Family Services Governing Institute will benefit the communities administering that jurisdiction and Canada as a whole, and is an essential element of reconciliation in Canada;

AND WHEREAS the Truth and Reconciliation Commission's report on the implementation process sets all aspects of society, and is the basis for a respectful and meaningful relationship between Indigenous and non-Indigenous peoples working in the area of children and family services;



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Read this analysis of the Act Respecting First Nations, Inuit and Metis children, youth and families (C-92) by 5 Indigenous law profs. Published at the [@Yellowhead](#)



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The Murdered and Missing Women and Girls Inquiry identified the need to address structural and individual racism in law enforcement. In 1972, CBC's "Our Native Land" program recommended the same thing. That is 48 years ago! #ColonialRuleOfLaw



RCMP attitudes to Native Canadians in 1972 - CBC Ar...
Looking at the unhappy marriage of the RCMP and
Aboriginal people - time for a divorce?
[cbc.ca](https://www.cbc.ca)

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RESOURCE

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RESOURCE 25

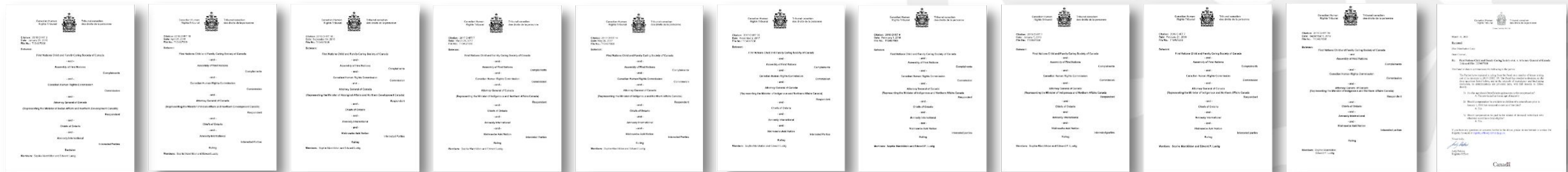


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In 2016, the Government of Canada accepted a Canadian Human Rights Tribunal decision that it was racially discriminating against over 165,000 children by providing flawed and inequitable public services to First Nations children. The Tribunal has issued 10 more orders (and counting) to get Canada to begin to comply. #ColonialRuleOfLaw

wilful and reckless

- [2016 CHRT 2](#)
- [2016 CHRT 10](#)
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First Nations Child & Family
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