

REBÂTIR LA CONFIANCE

EXTRAIT DU RAPPORT DU COMITÉ D'EXPERTS
SUR L'ACCOMPAGNEMENT DES VICTIMES
D'AGRESSIONS SEXUELLES ET DE VIOLENCE CONJUGALE

Chapter 4 – Address Sexual Assault
and Domestic Violence
in an Indigenous Context

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Chapter 4 – Address Sexual Assault and Domestic Violence in an Indigenous Context

In brief: Indigenous victims should have access to psychosocial/legal support that takes their cultural values and the sociohistorical context of the violence into account.

Introduction

While the requirements of the justice system highlight the similarities between Indigenous and Québec societies as a whole, the importance of developing specific strategies that reflect the distinct character of First Nations and Inuit people cannot be overlooked. There are numerous differences to be considered in the Indigenous context, in terms of both risk factors and methods used to support victims of sexual assault and domestic violence.

Many factors must be taken into account in analyzing sexual assault and domestic violence in Indigenous populations, including sociohistorical context, living conditions and systemic relations often marked by prejudice, misconceptions, ignorance and racism. All the organizations the committee met with during the course of its work unanimously stated that the problem of violence in Indigenous communities must be addressed in the specific social and historical context that has given rise to the factors resulting in the adoption of violent behaviour.

4.1 Indigenous populations in Québec

There are 11 Indigenous nations in Québec. They are distributed across 55 communities, including 41 First Nations communities and 14 Inuit villages. According to the population data provided by the Ministère de la Justice du Québec [Québec department of justice], the province is home to 111,510 Indigenous persons, including 98,192 members of First Nations and 13,318 Inuit.

Each nation has its own mode of governance, organization and operation. Each nation also has its own traditions, history, language, beliefs and local characteristics, as well as a very specific way of relating to itself and others. All are autonomous and independent.

In this context, there is the risk that any attempt to impose a single, pan-Indigenous solution may fail to reflect each nation's reality and needs. Of course, we acknowledge that there are areas in which this is less problematic; for example, it is easier to take these specific aspects into consideration in health and social services than in the field of justice. However, it is essential to keep in mind that Québec's Indigenous population is made up of a diverse group of people from a number of different communities. Over the past few years, both Canada and Québec have taken steps to raise awareness of Indigenous legal traditions by promoting alternative approaches to the traditional Canadian justice system.

4.2 Sexual and domestic violence in an Indigenous context

Although occurrences of sexual abuse and domestic violence in Indigenous communities resemble those in Québec society at large, they are set apart by the accumulation of risk factors many Indigenous people are faced with. Precarious socioeconomic conditions (i.e., high level of poverty, lack of education, overcrowded and poor living conditions, lack of access to health and social services, etc.), geographical and social isolation, widespread alcohol and drug abuse, a much younger age structure and small community size are just some of the elements that have a significant impact on the balance between personal, family and community life. In addition, whether in an urban or other environment, racism and social exclusion have rendered many Indigenous people vulnerable, both individually and collectively.

According to the organizations consulted, the main obstacles preventing people from speaking up are:

“[...] a lack of trust on the part of Indigenous populations in a justice system built on a history of systemic violence and discrimination that has continued since colonization and on the over-criminalization of Indigenous people. In fact, they equate the Québec justice system with oppression, rather than protection. This mistrust is exacerbated by the fact that the violence experienced by Indigenous people in cities is trivialized and met with indifference, especially by police officers.”¹

The phenomenon of sexual assault and domestic violence crosses generations and though the historical experiences may have occurred far in the past, the present generations still carry the burden of the intergenerational trauma as both the heirs and repositories of a colonialist system devoid of sensitivity to the cultures and realities of Indigenous people.

The organizations we consulted noted that Indigenous people are particularly vulnerable to sexual assault and domestic violence due to the historical vulnerability factors affecting this population and the intergenerational trauma caused by colonization and the discriminatory policies it has given rise to:

“Violence is a legacy of colonialism and the violence suffered by Indigenous people in the residential schools or following placement by the Youth Protection Branch. The rate of violence is higher among Indigenous people. Indigenous women and girls are more at risk than any other group in Canada. They are three times more likely to be subjected to sexual assault or domestic violence than non-Indigenous women and girls. They are overrepresented in sexual victimization, which constitutes 33% of all crimes committed against Indigenous women, while sexual assault represents 10% of all crimes committed against non-Indigenous women.”²

4.2.1 Prevalence

It is difficult to ascertain how prevalent sexual assault and domestic violence are within Québec's adult population. The same goes for Indigenous populations, though it is generally acknowledged that sexual assault and domestic violence are more prevalent among Indigenous people than in the rest of Québec's population. The most recent statistics show that Indigenous women (10%) are three times likelier than non-Indigenous women (3%) to be victims of domestic violence, i.e., violent behaviour perpetrated in the context of an intimate relationship. Moreover, more than one out of every 10 women (11.3%) reported missing in 2011 was Indigenous, despite the fact that Indigenous women represent only 4% of Canada's female population.³

¹ Testimony during consultation with organizations in 2020: Marianne Lirette, Maison Halte-Femmes Haute; Chantal Lalonde, Maison d'hébergement Le Nid; François Côté, Sûreté du Québec; Katy Tanguay, Service d'aide psychosociale du Cégep de l'Outaouais; Danielle Descent, Psychologist, Ordre des psychologues du Québec, Eva Laoun and Édith Cloutier, Val-d'Or Native Friendship Centre; Rainbow Miller, Quebec Native Women; Donald Nicholls and Mre Angeline Therrien-Lapointe, Department of Justice and Correctional Services, Cree Nation Government; Judith Morency, Psychologist, Ordre des psychologues du Québec. Briefs: First Nations of Quebec and Labrador Health and Social Services Commission, 2020, p. 4; Commission des services juridiques, 2020, p. 8; Quebec Native Women, 2020, appendix; Val-d'Or Native Friendship Centre, 2020, p. 2-4; Department of Justice and Correctional Services, Cree Nation Government, 2020, p. 2.

² Testimony during consultation with organizations in 2020: Rainbow Miller, Quebec Native Women; Mre Eva Laoun and Édith Cloutier, Val-d'Or Native Friendship Centre; Donald Nicholls and Mre Angeline Therrien-Lapointe, Department of Justice and Correctional Services, Cree Nation Government. Briefs: Val-d'Or Native Friendship Centre, 2020, p. 2; Quebec Native Women, 2020, appendix; Department of Justice and Correctional Services, Cree Nation Government, 2020, p. 1 and 2.

³ Boyce, J. (2015). *Victimization of Aboriginal people in Canada, 2014*. Taken from: <http://www.statcan.gc.ca/pub/85-002-x/2016001/article/14631-eng.htm>; Statistics Canada. (2013). *Aboriginal Peoples in Canada: First Nations People, Métis and Inuit*. Taken from: <https://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-011-x/99-011-x2011001-eng.cfm>; Boyce, J., Rotenberg, C., and Karam, M. (2015). *Mental health and contact with police in Canada, 2012*. Taken from: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2015001/article/14176-eng.htm>; Kumar, M.B. (2016). *Aboriginal Peoples Survey, 2012 — Lifetime suicidal thoughts among First Nations living off reserve, Métis and Inuit aged 26 to 59: Prevalence and associated characteristics*. Taken from: <https://www150.statcan.gc.ca/n1/fr/pub/89-653-x/89-653-x2016008-eng.pdf?st=r-JDF9bp>; Statistics Canada (2015). *Aboriginal Statistics at a Glance: 2nd Edition*. Taken from: <https://www150.statcan.gc.ca/n1/pub/89-645-x/89-645-x2015001-eng.htm>.

During the consultations, all organizations consulted categorically stated that the prevalence is higher among Indigenous populations, including those in urban environments, and "...can also lead Indigenous people to leave their communities for urban centres where they become at risk of homelessness and vulnerable to violence and sexual exploitation."⁴

A few stakeholders indicated that there is an even higher prevalence in Inuit populations. The risk factors are greater in these communities, particularly because it is difficult for them to develop support networks due to their remote locations, and due to a history of relations with the Québec system marked by the imposition of a way of life that has disrupted the traditional roles of Inuit men and women. Social and economic conditions lead these populations to leave their communities, particularly to move to Montréal. Once in an urban environment, the difficulties they face in adapting to their new surroundings, combined with their already fragile situation, increase their risk of falling victim to sexual assault and exploitation.⁵

Although these crimes are more prevalent in Indigenous communities, it should be noted that, as is the case in non-Indigenous communities, the rate of reporting of violence is quite low in Indigenous populations. Organizations cite Indigenous populations' general lack of trust in a justice system built on a history of systemic violence and discrimination and on the over-criminalization of their people as a major obstacle to reporting.⁶

4.2.2 Social and historical context

In this context, violence cannot be examined without addressing the historical facts that have given rise to the trauma and pain which, in turn, have led people to adopt patterns of behaviour that are harmful to themselves and others. There is wide recognition and extensive documentation to show that discriminatory policies such as the *Indian Act*, government patronage, the imposition of a system of Indian reserves and upheaval of Indigenous lifestyles due to forced settlement, the devaluation of Indigenous culture and negation of the existence of any Indigenous identity, and the numerous abuses committed in residential schools have had intergenerational repercussions.⁷ The loss of the cultural, family and social references that are essential to self-determination has broken down coping mechanisms and led to individual, family, cultural and community disorganization. It is important to recognize the impacts of these policies on Indigenous people to better understand how relations between these populations and the justice system have been profoundly marked.

⁴ Testimony during consultation with organizations in 2020: Donald Nicholls, Director and Mtre Angeline Therrien-Lapointe, Department of Justice and Correctional Services, Cree Nation Government; Mtre Eva Laoun and Édith Cloutier, Val-d'Or Native Friendship Centre. Briefs: Val-d'Or Native Friendship Centre, 2020, p. 2; Department of Justice and Correctional Services, Cree Nation Government, 2020, p. 2.

⁵ Brief: CALACS Abitibi, 2020, p. 6. Testimony during consultation with organizations in 2020: Geneviève Ricard, Victim Services, Parole Board of Canada.

⁶ Testimony during consultation with organizations in 2020: Marianne Lirette, Maison Halte-Femmes Haute-Gatineau; Chantal Lalonde, Maison d'hébergement Le Nid; François Côté, Sûreté du Québec; Katy Tanguay, Service d'aide psychosociale du Cégep de l'Outaouais; Danielle Descent, Psychologist; Eva Laoun, Lawyer and Édith Cloutier, Val-d'Or Native Friendship Centre; Rainbow Miller, Quebec Native Women; Donald Nicholls and Angeline Therrien-Lapointe, Department of Justice and Correctional Services, Cree Nation Government; Judith Morency, Psychologist, Ordre des psychologues du Québec. Briefs: First Nations of Quebec and Labrador Health and Social Services Commission, 2020, p. 4; Commission des services juridiques, 2020, p. 8; Quebec Native Women, 2020, appendix; Val-d'Or Native Friendship Centre, 2020, pp. 2-4; Department of Justice and Correctional Services, Cree Nation Government, 2020, p. 2 (point 15).

⁷ Sylvestre, M., Gaouette, J., Jaccoud, M., Bellot, C. (2018). *Les relations entre les Autochtones et les services de justice au Québec : une recension des écrits* [relations between Indigenous Peoples and justice services in Québec: a literature review] p. 20-3, Québec: Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress (CERP). Taken from: https://www.researchgate.net/publication/331652735_LES_RELATIONS_ENTRE_LES_AUTOCHTONES_ET_LES_SERVICES_DE_JUSTICE_DU_QUEBEC_UNE_RECENSION_DES_ECRITS_rapport_soumis_a_la_Commission_d%27enquete_sur_les_relations_entre_les_Autochtones_et_certains_services.

The spiritual, cultural, psychological, emotional, physical and sexual abuses perpetrated on Indigenous people in residential schools and under all policies of assimilation have led to the emergence of a number of problems, which still persist due to current living conditions. Therefore, to address sexual assault and domestic violence in Indigenous communities, it is crucial to examine the underlying factors:

“It is important to look at all the internal factors that render people vulnerable to sexual assault or domestic violence, such as access to housing. This makes it possible to identify what type of prevention or intervention needs to be developed. We need to tackle the root causes of violence against Indigenous people. Therefore, we need to consider the history of trauma related to residential schools and ongoing systemic discrimination in the Québec system. Resources must be invested in victim services to support healing and break the cycle of intergenerational trauma. For Indigenous people, dealing with the contributing factors and engaging in the healing process with them is just as important as addressing the administration of justice.”⁸

This historical period allowed a deep psychological distress to take root in these communities, where it persists to this day, resulting in the dispossession of their lands, resources and rights: “It is now increasingly being recognised that the experience of colonialism and the violence perpetrated against Indigenous people by white colonialists has had an indelible impact on Indigenous people.”⁹ That said, these communities are still grappling with the effects of colonization today, namely in terms of the lack of economic opportunities, poverty, marginalization and discrimination, all of which are elements that contribute to their sense of distress.

In addition to these historical factors, the systemic discrimination that still persists within the Québec system has also contributed to what we now know to be a higher prevalence of sexual assault and domestic violence in Indigenous populations.

4.3 Relations between the traditional justice system and Indigenous people: difficulties reiterated time and time again

This is sadly not the first report to focus specifically on Indigenous people. Since the 1970s, many inquiries, commissions, working groups and federal and provincial committees have studied the relationship between the justice system and Indigenous people.¹⁰

The 1972 report by the Ministère de la Justice du Québec entitled *La justice au Nord du 50^e parallèle* [justice north of the 50th parallel] already stated the following: “For the Ministère de la Justice, it is a question of adapting our justice system to the customs and spirit of these populations. It is not sufficient to simply extend our legal structures into the northern communities. We must make them acceptable to populations with specific cultures and mentalities.”¹¹

These oft-repeated observations are also found in four major reports which, each in their own way, establish a clear correlation between the history of Indigenous people, their present-day realities, the difficult living conditions they face and the impacts on their relations with the justice system.

⁸ Testimony during consultation with organizations in 2020: Donald Nicholls and Mtre Angeline Therrien-Lapointe, Department of Justice and Correctional Services, Cree Nation Government; Nicole Wapistan and Odette Benjamin, Centre d'amitié autochtone de Sept-Îles; Danielle Descent, Psychologist. Brief: Department of Justice and Correctional Services, Cree Nation Government, 2020, p. 6.

⁹ Keel, M. (2004). *Family violence and sexual assault in Indigenous communities* “Walking the talk,” p.8. Taken from: <https://apo.org.au/sites/default/files/resource-files/2004-10/apo-nid452.pdf>.

¹⁰ For further details, see the chronology provided in: Sylvestre, M., Gaouette, J., Jaccoud, M., Bellot, C. (2018). *Les relations entre les Autochtones et les services de justice au Québec : une recension des écrits*. p. 20-3, Québec: Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress (CERP). Taken from: https://www.researchgate.net/publication/331652735_LES_RELATIONS_ENTRE_LES_AUTOCHTONES_ET_LES_SERVICES_DE_JUSTICE_DU_QUEBEC_UNE_RECENSION_DES_ECRITS_rapport_soumis_a_la_Commission_d%27enquete_sur_les_relations_entre_les_Autochtones_et_certains_services.

¹¹ Choquette, J. (1973). *La justice au nord du 50^e parallèle*. Québec: Éditeur officiel du Québec, p.3.

4.3.1 Report of the Royal Commission on Aboriginal Peoples (Erasmus-Dussault)

"The Royal Commission on Aboriginal Peoples (RCAP) was established by Order in Council on August 26, 1991, and it submitted in October 1996 the Report of the Royal Commission on Aboriginal Peoples."¹² The report highlighted the situation of Indigenous Peoples in Canada, particularly in terms of socioeconomic factors.¹³

The Commission's report provides a general description of the consequences of policies of assimilation on the living conditions of Indigenous people and their overall quality of life. In matters of justice, the Commission concludes that Canadian policies have denied the existence of a legal tradition and recommends that an Indigenous justice system that acknowledges their values be implemented.

4.3.2 Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls

The National Inquiry into Missing and Murdered Indigenous Women and Girls (NIMMIWG) is an independent public inquiry established in 2015 for the purpose of establishing concrete measures with which to fight violence against Indigenous women and girls.¹⁴

The inquiry also led the commissioners to conclude that victimized Indigenous women who turn to the penal justice system to report the violence perpetrated against them are often "confronted with an individual, policy, procedure, or way of relating that shows little to no awareness or understanding" of who they are and views them "through a lens of pervasive racist and sexist stereotypes."¹⁵ This makes Indigenous victims of violence more distrustful and less willing to cooperate with first responders, police services, prosecutors and victim services. The report concludes that violence against Indigenous women is directly related to the genocidal policies implemented by governments.

The report lists 231 calls for justice addressed to the various levels of government and services. These calls for justice are based on a decolonization approach, which recognizes the inherent competency of Indigenous Peoples and affirms that the solutions must come from the communities and nations, while ensuring adequate funding.

4.3.3 Report of the Truth and Reconciliation Commission of Canada

The Truth and Reconciliation Commission (TRC) was constituted and created under the *Indian Residential Schools Settlement Agreement* to gather testimony from Indigenous people who were subjected to the residential school system.¹⁶ The TRC had numerous objectives:

1. Acknowledge Residential School experiences, impacts and consequences.
2. Provide a holistic, culturally appropriate and safe setting for former students, their families and communities as they come forward to the Commission.

¹² Royal Commission on Aboriginal Peoples (1996). *Report of the Royal Commission on Aboriginal Peoples*. Ottawa: Library and Archives Canada. Taken from: <https://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/introduction.aspx>.

¹³ Crown-Indigenous Relations and Northern Affairs Canada (2012). *Highlights from the Report of the Royal Commission on Aboriginal Peoples*. Taken from: <https://www.rcaanc-cirnac.gc.ca/eng/1100100014597/1572547985018>.

¹⁴ Crown-Indigenous Relations and Northern Affairs Canada (2019). *National Inquiry into Missing and Murdered Indigenous Women and Girls*. Taken from <https://www.rcaanc-cirnac.gc.ca/eng/1448633299414/1534526479029>; National Inquiry into Missing and Murdered Indigenous Women and Girls (2019). *Executive Summary*, Taken from: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive_Summary.pdf.

¹⁵ Id. p. 42.

¹⁶ Truth and Reconciliation Commission (2015). *Report*. Taken from: http://nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf; National Centre for Truth and Reconciliation (2007). *Indian Residential Schools Settlement Agreement, Schedule N*. Taken from: http://www.trc.ca/assets/pdf/v-SCHEDULE_N_EN.pdf.

3. Witness, support, promote and facilitate truth and reconciliation events at both the national and community levels.
4. Promote awareness and public education of Canadians about the IRS system and its impacts.

The six-volume report filed in 2015 comprises 94 calls to action to advance the process of reconciliation. These recommendations include the following:

- Ensure that all lawyers and law students receive appropriate cultural competency training, which includes the history of Indigenous people.
- Provide culturally relevant services to detainees on issues such as family and domestic violence and overcoming the experience of having been sexually abused.
- Create adequately funded and accessible Aboriginal-specific victim programs and services with appropriate evaluation mechanisms.
- Implement an Indigenous legal system.

4.3.4 Report of the independent civilian observer concerning Montréal police investigations of allegations of criminal acts by Québec provincial police officers against Indigenous women in Val-d'Or and elsewhere

Following a story broadcast by Radio-Canada which presented testimony from Indigenous women who claimed to be victims of sexual assault and abuse of power by officers of the Sûreté du Québec (SQ) [Québec provincial police], the Ministère de la Sécurité publique du Québec [Québec department of public safety] mandated the Service de police de la ville de Montréal (SPVM) [City of Montréal police force] to investigate the allegations. Since the investigation was to take place prior to the creation of the Bureau des enquêtes indépendantes (BEI) [office of independent investigations], the government announced that Mre Fannie Lafontaine would monitor the SPVM investigation as an independent observer.¹⁷

The investigation involves 38 cases of criminal offences committed between 1983 and 2016 and concerns 31 victims, including 24 women. Though the independent civilian observer concluded that the investigation had been conducted with integrity and impartiality, she also reported several “related observations concerning:

- the urgent need for victim protection and support;
- the need to rapidly clarify the way in which complaints by an Indigenous person against a police officer are to be processed in the future and mount an information and awareness campaign about the process with First Nations people;
- the importance of ensuring that Indigenous people are adequately represented in the process and of providing training based on cultural competency and safety;
- the need for an overall strategy for training non-Indigenous police officers; and
- the need to shed light on the causes underlying the allegations of sexual assault and abuse of power by police officers and on the possible existence of discriminatory practices toward Indigenous people, particularly Indigenous women, which points to the existence of systemic racism in law enforcement.”¹⁸ (Free translation)

¹⁷ Lafontaine, F. (2016). *Report of the independent civilian observer: Évaluation de l'intégrité et de l'impartialité des enquêtes du SPVM sur des allégations d'actes criminels visant des policiers de la SQ à l'encontre de femmes autochtones de Val-d'Or et d'ailleurs* (in French only). Québec: Ministère de la Sécurité publique. Taken from: <https://www.securitepublique.gouv.qc.ca/fileadmin/Documents/ministere/rapports/rapport-observatrice-independante-enquete-spvm-sq.pdf>.

¹⁸ Lafontaine, F. (2016). *Report of the independent civilian observer: Évaluation de l'intégrité et de l'impartialité des enquêtes du SPVM sur des allégations d'actes criminels visant des policiers de la SQ à l'encontre de femmes autochtones de Val-d'Or et d'ailleurs* (in French only). Québec: Ministère de la Sécurité publique, p. 11. Taken from: <https://www.securitepublique.gouv.qc.ca/fileadmin/Documents/ministere/rapports/rapport-observatrice-independante-enquete-spvm-sq.pdf>

4.3.5 Report of the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress (Viens Report)

In the wake of the allegations of sexual assault in Val-d'Or, the report of the independent civilian observer and several meetings with Indigenous leaders, the Québec government announced the creation of the Public Inquiry Commission on relations between Indigenous Peoples and certain public services (the Viens Commission) in December 2016.¹⁹

The Commission was given the mandate to investigate, ascertain the facts and make analyses with a view to making recommendations as to the concrete, effective and sustainable measures to be implemented by the Gouvernement du Québec and by the Aboriginal authorities to prevent or eliminate, regardless of their origin or cause, any form of violence or discriminatory practices or differential treatments in the provision of public services to the Aboriginals of Québec.

In September 2019, the Commission filed a report containing 142 recommendations. The report is based on two calls for action that pave the way for the other recommendations, i.e.:

1. adoption by the National Assembly of a motion to recognize and implement the United Nations Declaration on the Rights of Indigenous Peoples in Québec; and
2. enactment of legislation guaranteeing that the provisions of the Declaration will be taken into account in the body of legislation under provincial jurisdiction.

The report also refers to the specific difficulties encountered by Indigenous victims of sexual assault or domestic violence when bringing a complaint. In particular, the following recommendations should be noted:

- ✓ Call for Action No. 41: Amend the existing laws, including the *Act respecting the Director of Criminal and Penal Prosecutions*, to allow agreements to be signed to create specific justice administration systems with Indigenous nations, communities or organizations active in urban areas.
- ✓ Call for Action No. 42: Encourage the introduction of community justice programs and the implementation of alternative measures programs for Indigenous adults in all cities where the Indigenous presence requires it.
- ✓ Call for Action No. 43: Set aside a sustainable budget for Indigenous community justice programs and for the organizations responsible for keeping them up to date, proportionate to the responsibilities assumed and adjusted annually to ensure its stability, factoring in the normal increases in operating costs of such programs.
- ✓ Call for Action No. 44: Amend the *Act respecting legal aid* to introduce special tariffs of fees for cases involving Indigenous people, in both civil and criminal matters.
- ✓ Call for Action No. 45: Invest in developing premises adequate to the exercise of justice in each of the communities where the Itinerant Court sits, as soon as possible.
- ✓ Call for Action No. 86: Initiate tripartite negotiations with the federal government and Indigenous authorities to sustainably fund projects created by Indigenous nations, communities and organizations that seek to identify, reduce, prevent and eliminate sexual assault.
- ✓ Call for Action No. 87: To Indigenous authorities: Raise awareness among the populations of indigenous communities about the nature of sexual assault and promote healthy and respectful sexuality education.

¹⁹ Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress (2019). Québec: Gouvernement du Québec. Taken from: <https://www.cerp.gouv.qc.ca/index.php?id=2&L=1>

In summary, the many reports from various committees, working groups and commissions clearly acknowledge the issues stemming from the imposition of a system that addresses very few of the needs of Indigenous people. Most of the findings and recommendations point to the same conclusion: that providing better access to the justice system involves the systematic and political acknowledgment of Indigenous historical, social and cultural characteristics and a legal tradition based on Indigenous autonomy and governance.

4.4 Fundamental principles of justice in an Indigenous context

4.4.1 A holistic, inclusive justice system

Various government organizations and commissions have noted the existence of justice systems based on Indigenous cultural foundations.²⁰ The majority of individuals who gave testimony concerning the realities of Indigenous life stated that First Nations and Inuit people had a different understanding of crime and how to deal with it. Indigenous people want to address crime from a holistic perspective that promotes healing for both the victim and the perpetrator, as well as for their respective families, friends and communities.²¹

In the current system, responses to crime are based on a punitive and individual vision and are ill-suited to Indigenous populations. Indigenous justice interventions focus on healing, reparation, the restoration of community harmony and rebuilding the family, with issues of Indigenous identity as a backdrop. The state justice system, which is based on coercion and repression, is inconsistent with the needs of Indigenous women. For Indigenous people, justice must be carried out as a community, in consideration of the issues affecting the perpetrator and victim and their respective families (i.e., using a multifaceted approach).²² There is little room for holistic healing processes in the Québec justice system. In this context, some victims prefer not to report the perpetrator²³ and some families choose to settle the matter between themselves:

“[...] the parties try to resolve the matter within the family and may even involve the extended family (i.e., cousins, grandmother, etc.). People are as much on the perpetrator's side as the victim's, as the perpetrator is also a human being who needs help.”²⁴

4.4.2 Collaboration between the communities, the urban environment and the Québec network

Far from demanding a purely Indigenous justice system, organizations are requesting that greater focus be placed on the authorities' capacity to accept a vision of justice and other ways of doing things that will bring about a broader transformation.²⁵ Thus, a number of Indigenous stakeholders feel that at the very least, services should be provided in collaboration with the Indigenous communities to ensure the approach is adapted to their needs:²⁶

²⁰ Sylvestre, M., Gaouette, J., Jaccoud, M., Bellot, C. (2018). *Les relations entre les Autochtones et les services de justice au Québec : une recension des écrits*. p. 20-3, Québec: Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress (CERP). Taken from: https://www.researchgate.net/publication/331652735_LES_RELATIONS_ENTRE_LES_AUTOCHTONES_ET_LES_SERVICES_DE_JUSTICE_DU_QUEBEC_UNE_RECENSION_DES_ECRITS_rapport_soumis_a_la_Commission_d%27enquete_sur_les_relations_entre_les_Autochtones_et_certains_services.

²¹ Testimony during consultation with organizations in 2020: Rainbow Miller, Quebec Native Women; Nicole Wapistan and Odette Benjamin, Centre d'amitié autochtone de Sept-Îles.

²² Testimony during consultation with organizations in 2020: Mre Eva Laoun and Édith Cloutier, Val-d'Or Native Friendship Centre; Danielle Descent, Ordre des psychologues du Québec. Brief: Val-d'Or Native Friendship Centre, 2020, p. 4.

²³ Testimony during consultation with organizations in 2020: Danielle Descent, Ordre des psychologues du Québec. Brief: Commission des services juridiques, 2020, p. 8.

²⁴ Testimony during consultation with organizations in 2020: Nicole Wapistan and Odette Benjamin, Centre d'amitié autochtone de Sept-Îles.

²⁵ Brief: First Nations of Quebec and Labrador Health and Social Services Commission, 2020, p. 5.

²⁶ Testimony during consultation with organizations in 2020: Donald Nicholls and Mre Angeline Therrien-Lapointe, Department of Justice and Correctional Services, Cree Nation Government; Isabelle Fortin, CAVAC de Sept-Îles. Brief: Department of Justice and Correctional Services, Cree Nation Government, 2020, pp. 3 and 4.

“[We must] improve cooperative efforts and partnerships, develop fluid corridors between the services offered by First Nations organizations [...] and regional partners and those provided through the justice system.”²⁷

“We must avoid offering Indigenous people a cookie-cutter solution; they won’t accept it because of all the systemic and historical issues involved. Not only must Indigenous people be incorporated into the services, but [...] ties must also be forged between the community and the services (i.e., partnerships).”²⁸

In this context, there needs to be broader collaboration with Indigenous organizations. Although the commissions, some tribal councils and even some Indigenous friendship centres take part in a number of issue tables on sexual assault and domestic violence, their participation is neither systematic, nor formalized.

Therefore, organizations emphasize the importance of ensuring further collaboration between Indigenous communities and cities and establishing partnerships for providing services to Indigenous people. When Indigenous people in cities seek non-Indigenous services, they are often turned away and referred to services that are designed specifically for Indigenous people but that are not funded. It is important that vulnerability be reduced, both within and outside the communities. There are programs to raise awareness about abuse in Indigenous communities, but these types of programs for Indigenous people cannot be established in cities. Therefore, cities need to work with Indigenous communities.

Indigenous communities must have the opportunity to be heard if they are to raise awareness about their perception of violence and the culturally relevant, safe ways of addressing it.

It is also important that this cooperative approach be extended to the urban environment. A considerable number of Indigenous people pass through or live in urban environments and do not have access to adequate services. A person’s “Indian” “on or off-reserve” status affects the way their request for help is received and/or processed. There is sometimes confusion or a lack of knowledge surrounding the provision of services or the types of services that can be provided through the Indigenous or Québec network: “We need to create networks so that the Québec services know what the [...] services do.”²⁹

Recommendation 16: Develop culturally relevant sexual assault and domestic violence services for Indigenous people living in Indigenous communities or urban environments.

Recommendation 17: Based on specific local circumstances, formally reserve a seat for the Assembly of First Nations of Quebec and Labrador and/or an organization representing Indigenous people in urban environments and/or an organization representing Inuit communities at every issue table on sexual assault and domestic violence.

4.4.3 Reviving Indigenous legal traditions by, for and with Indigenous people

As previously stated, Indigenous justice is based on a more humanist approach that takes personal needs into consideration and focuses on healing the imbalance in the various spheres of the person’s life, regardless of whether that person is the victim or the perpetrator; i.e., reparation and inclusion. The current system is based on punitive processes and produces dynamics of exclusion and stigmatization that are unacceptable to First Nations and Inuit people. Indigenous people do not follow the social regulation requirements of the state system but rather, adhere to those incorporated into the spiritual elements and rituals inherent to Indigenous justice. Indigenous justice is a more inclusive system that includes family members and friends as part of the solution in an effort to restore balance. In the humanist philosophy of Indigenous people, everyone needs help, even offenders.

²⁷ Testimony during consultation with organizations in 2020: Judith Morency, Psychologist, Ordre des psychologues de Québec.

²⁸ Testimony during consultation with organizations in 2020: Danielle Descent, Psychologist, Ordre des psychologues de Québec.

²⁹ Testimony during consultation with organizations in 2020: Donald Nicholls and Mre Angeline Therrien-Lapointe, Department of Justice and Correctional Services, Cree Nation Government.

Several of the stakeholders consulted proposed concrete solutions that should, first and foremost, be anchored in the acknowledgment of Indigenous legal traditions and the implementation of alternative legal procedures, which allow for an approach that is more in tune with the cultural references and practices of Indigenous justice. While the specific means to achieve this need to be thought out by Indigenous people in collaboration with the Québec system, it is essential to keep the following in mind:

“Restorative justice is a very important tool for First Nations, as it constitutes an approach that values and emphasizes traditional conflict resolution practices. In other words, it involves the victim, the perpetrator (or offender) and the community in the healing process and thus benefits the entire community.”³⁰

Moreover, Indigenous organizations are requesting that support and funding be provided to the communities for the development of community and alternative justice initiatives that are in line with Indigenous legal traditions: “The solutions must come from the Indigenous communities and organizations since they are in the best position to create justice solutions that reflect their practices, beliefs and cultures.”³¹

All these organizations are in favour of implementing restorative justice practices for Indigenous people: justice committees, mediation, reparation measures, alternative measures programs for communities, etc.³² However, they do not discount the possibility of having recourse to the traditional justice system.

Similarly, the Commission des services juridiques considers “that it would be important for Crown prosecutors to quickly ascertain the victim’s position regarding the sentence and ensure that it is taken into account.”³³ The Commission also proposes establishing a support service to be provided alongside police services for victims of domestic violence:

“Creating a support service for Indigenous victims of domestic violence could also be a good solution. In other words, it could be another gateway to justice, besides the police. It would provide support adapted to their needs and, especially, to their culture. Workers would be specially trained to offer assistance in both emergency and less critical situations and to find solutions that provide the victim with a safety net, whether through a change of address or the application of conditions or restrictions on access to the victim’s place of residence. This new support service could be offered as part of an alternative justice system, in the event that such a system would need to be implemented in cases of sexual assault and domestic violence. Every intervention would have to be documented in detail. The conditions or restrictions imposed by the professional worker, with the victim and the perpetrator’s consent, must be documented and retained. Victims and perpetrators must be informed of their respective rights, i.e., that victims have the right to file a complaint with the police and perpetrators have the right to contact a lawyer.”³⁴

³⁰ Briefs: Quebec Native Women, 2020, p. 5; First Nations of Quebec and Labrador Health and Social Services Commission, 2020, p. 4. See also testimony during consultation with organizations in 2020: Rainbow Miller, Quebec Native Women.

³¹ Testimony during consultation with organizations in 2020: Mre Eva Laoun and Édith Cloutier, Val-d’Or Native Friendship Centre. Brief: Val-d’Or Native Friendship Centre, 2020, p. 4.

³² Testimony during consultation with organizations in 2020: Donald Nicholls, Director and Mre Angeline Therrien-Lapointe, Department of Justice and Correctional Services, Cree Nation Government; Danielle Descent, Psychologist, Ordre des psychologues; Mre Eva Laoun and Édith Cloutier, Val-d’Or Native Friendship Centre; Rainbow Miller, Quebec Native Women; Nicole Wapistan and Odette Benjamin, Centre d’amitié autochtone de Sept-Îles; Judith Morency, Psychologist, Ordre des psychologues du Québec. Briefs: First Nations of Quebec and Labrador Health and Social Services Commission, 2020, p. 3; Quebec Native Women, 2020, p. 5; Centre for Services in Restorative Justice, 2020, p. 5, Barreau du Québec, 2020, p. 4; Department of Justice and Correctional Services, Cree Nation Government, 2020, p. 5 and 6.

³³ Brief: Commission des services juridiques, 2020, p. 8.

³⁴ Id.

According to Quebec Native Women, a holistic healing process could be conducted in parallel with the current system: “Indigenous people do not reject the Québec justice system, but the two systems have to work together and complement one another.”³⁵

Recommendation 18: Offer restorative justice programs to Indigenous adult victims of sexual assault and domestic violence, both outside the formal judicial system (e.g., voluntary citizen participation or alternative measures) and as part of the passing and enforcement of the sentence. Such restorative justice programs must be related to the establishment of a specialized sexual assault and domestic violence court (see section 4.7: Establishing a specialized sexual assault and domestic violence court in an Indigenous context).

4.4.4 Acknowledgment of identity and the cultural safety of psychological, social and legal services

The process of acknowledging identity and ensuring the cultural safety of psychological, social and legal services rests on the principle of recognizing the legitimacy of the distinguishing factors that define Indigenous people, be they historical, social, personal, family- or community-related or relational, as well as on acknowledgment of these distinctions by Québec institutions and recognition of the past and current contributions of Indigenous people. The goal of acknowledging identity and ensuring cultural safety is to recognize the equality in differences, as well as value the know-how and competence of Indigenous people and incorporate these elements into the solutions implemented by and for First Nations and Inuit people.

This approach requires humility on the part of both the state and institutions as a basic prerequisite, which means that they can neither question Indigenous practices, nor claim to know what should apply within Indigenous populations.

Therefore, acknowledging identity and ensuring cultural safety involves developing services adapted to the needs of Indigenous people. In terms of justice, cultural safety means offering solutions such as restorative justice measures which, as previously mentioned, are generally better adapted to the Indigenous humanist way of thinking.

Cultural safety also counterbalances the difficulty in accessing the justice system. When placed in a non-Indigenous system, some Indigenous people feel belittled and ashamed of their culture. This cultural shame affects their ability to get through the justice system.

Despite the efforts made to date, cultural safety measures do not go far enough. The following courses of action were recommended during our consultations: train psychosocial and legal professionals in Indigenous realities (see section 4.6: The need for training), incorporate Indigenous liaison officers into the justice system and support services, ensure better representation of Indigenous personnel within the justice system and support services and develop services “by and for” Indigenous people. The establishment of a specialized court with province-wide jurisdiction would give substance to several of these courses of action.

Recommendation 19: Adopt the guiding principle of cultural acknowledgment and safety required to give Indigenous people more access to the justice system, both within and outside the communities.

Recommendation 20: Ensure that Indigenous personnel is better represented, namely by employing Indigenous people in aid agencies and the justice system.

Recommendation 21: Ensure that general lines of referral lead to culturally safe services.

³⁵ Testimony during consultation with organizations in 2020: Rainbow Miller, Quebec Native Women.

4.5 Specific issues related to psychosocial/legal support in an Indigenous context

In addition to the factors associated with the fundamental principles described above, the organizations consulted mentioned several other elements that contribute to the difficulties Indigenous people encounter in using the justice system.

4.5.1 Overcrowding, fear of reprisal and the reliving of painful experiences

Along with many personal, family and social obstacles, the issues involved include the small size of the community, the importance placed on the concept of extended family and, despite the conditions imposed on the accused, the high likelihood that the victim and perpetrator will regularly cross paths in the community:

“How does the person deal with returning to and living in the community after the sentence has been served? It’s very hard; there has to be an adjustment in terms of protection and the person has to want to take up their life again.”³⁶

“Lastly, support must be provided to the families and friends of both victim and perpetrator, since both must deal with the consequences of the offence and the reporting of it, and both will have various psychosocial needs.”³⁷

Several organizations state that overcrowding in the community and the relationships within it create a specific context for dealing with a sexual assault or domestic violence offence. First of all, this context makes reporting the offence more complicated,³⁸ not only because “the victim is quickly identified and the entire community will pass judgment on the situation,”³⁹ but also because reporting it may have serious consequences for the entire extended family. When a victim files a complaint, the community quickly becomes divided between those who believe the perpetrator and those who believe the victim. People take sides, which creates family and social conditions that can sometimes be untenable for the person who dared report the incident. The enormous pressure exerted in such situations discourages victims from speaking up.

Moreover, the specific socioeconomic conditions and traumatic situations Indigenous people frequently encounter throughout their lives weaken their position even further. In this context, a violent incident can bring previously repressed or hidden suffering and distress back to the surface, not only for the victim, but also for the victim’s family and friends.⁴⁰ “Because of intergenerational trauma, when we work with an individual, the members of that person’s circle are also going to be affected and will need support.”⁴¹

4.5.2 The particular importance of psychosocial support

All victims of sexual assault and domestic violence require psychosocial support before and during the legal process and this is especially true for Indigenous people, in all areas of law. We must build bridges between the justice system and Indigenous people by providing ongoing preparation and support at all stages of the process.

³⁶ Testimony during consultation with organizations in 2020: Judith Morency, Psychologist, Ordre des psychologues du Québec.

³⁷ Testimony during consultation with organizations in 2020: Judith Morency, Psychologist, Ordre des psychologues du Québec; Mre Eva Laoun and Édith Cloutier, Val-d’Or Native Friendship Centre; Danielle Descent, Psychologist, Ordre des psychologues du Québec; Isabelle Fortin, CAVAC de Sept-Îles.

³⁸ Testimony during consultation with organizations in 2020: Martine Girard, Maison des femmes de Sept-Îles.

³⁹ Testimony during consultation with organizations in 2020: Dominique M.-Lavoie, Manager and Katy Tanguay, Service d’aide psychosociale du Cégep de l’Outaouais.

⁴⁰ Testimony during consultation with organizations in 2020: Danielle Descent, Psychologist, Ordre des psychologues du Québec; Nicole Wapistan and Odette Benjamin, Centre d’amitié autochtone de Sept-Îles.

⁴¹ Testimony during consultation with organizations in 2020: Judith Morency, Psychologist, Ordre des psychologues du Québec.

This community context means that the victim must receive long-term support: “It has an impact on medium- and long-term care.”⁴² The need for support measures often extends beyond the end of the process. The anxiety can return if the victim hears that another woman has been assaulted by the same person, or if her daughter has been subjected to inappropriate touching. In other words, women can make progress but then need to seek help again later. The door has to be kept open for victims who need help over time, at various stages of their lives. Lastly, we need to prepare for victims to “fail.” They are afraid the support resources will judge them if they go back to their violent spouses:

“The victim is quickly identified and the entire community will pass judgment on the situation.”⁴³

“In this overcrowded environment, the victim and perpetrator are likely to repeatedly cross paths in the community, despite the conditions imposed. Regular support must quickly be provided to the victim, who must learn to live with the perpetrator and deal with the numerous reactions the complaint will generate.”⁴⁴

“It is crucial that [support specific to cases of domestic assault and sexual violence] be provided for as long as the woman requires it, since the justice system will often revictimize an Indigenous woman and she may need continued support after the legal process is over, for example, if her complaint was rejected by the DPCP [Québec’s Director of Criminal and Penal Prosecutions] or dismissed by the Court. Sporadic support services do not meet the needs of women who require long-term help. In addition, these services must not be restricted to women who file a complaint, but should also be provided to those who choose not to [...].”⁴⁵

All these crucial issues indirectly affect access to justice and establish the basis for support, which must be provided in accordance with cultural values and include personal, psychosocial, family, cultural and historical dimensions.

4.5.3 Geographical distance and lack of services

Like the elements recorded by the Viens Commission in this regard, the geographical distance that separates victims in remote regions from legal services is yet another obstacle to access to justice.⁴⁶ First of all, it can be argued that the isolation of women due to their geographical location, limited housing, poor economic conditions and close-knit family and social relationships make it difficult for them to distance themselves from a violent situation.

Many organizations lament the lack of services for remote Indigenous communities: “Most Indigenous communities have no CALACS or CAVAC. CAVAC services are provided sporadically, which does not meet the needs of the victims.”⁴⁷

Several organizations have also pointed out the lack of follow-up in support services which, in particular, seem to get interrupted between the time the victim alerts the police and when they receive a letter from the CAVAC. These organizations are asking that “CAVAC professionals and paralegal advisors be present in Indigenous communities at all times and in sufficient numbers.”⁴⁸

⁴² Id.

⁴³ Testimony during consultation with organizations in 2020: Dominique M.-Lavoie, Manager and Katy Tanguay, Service d’aide psychosociale du Cégep de l’Outaouais.

⁴⁴ Testimony during consultation with organizations in 2020: Danielle Descent, Psychologist, Ordre des psychologues du Québec; Nicole Wapistan and Odette Benjamin, Centre d’amitié autochtone de Sept-Îles.

⁴⁵ Brief: Quebec Native Women, 2020, p. 6.

⁴⁶ Anonymous brief by a victim in Abitibi-Témiscamingue, 2020, pp. 2 and 3.

⁴⁷ Briefs: Quebec Native Women, 2020, p. 6; First Nations of Quebec and Labrador Health and Social Services Commission, 2020, p. 3.

⁴⁸ Brief: Barreau du Québec, 2020, p. 3 (Recommendation 6.1).

Quebec Native Women has also expressed disappointment that there are so few women's shelters in the communities (i.e., 13 shelters scattered across 54 communities), a situation it attributes, among others, to the fact that the federal funding they receive to establish such shelters is low compared to the funding provided by the provincial government.⁴⁹ Note that although it is important that women's shelters be established in Indigenous communities, some victims of domestic violence prefer to receive services outside the community to protect their anonymity.

All the members note the lack of services in Indigenous communities and of services adapted to Indigenous people living in or passing through urban environments.

The members state that a specialized sexual assault and domestic violence court cannot be established in the absence of such services. Therefore, establishing a specialized court with jurisdiction across Québec requires that services adapted to the needs of Indigenous people be developed and offered both within and outside the communities (see section 4.7: Establishing a specialized sexual assault and domestic violence court in an Indigenous context).

Lastly, some people have expressed concern about the absence of services for male victims or perpetrators. They find it disappointing that help only comes in the context of criminalization. "Perpetrators must be able to get help through avenues other than the justice system. They have no access to services if they self-report; they must be subject to legal proceedings to get help. There are private services, but they are few and far between in remote areas."⁵⁰

Nor can men who have been victims of abuse, are likely to commit an offence or simply wish to participate in a healing process get the help they need. Therefore, among other things, Quebec Native Women and other organizations are requesting that comprehensive services be developed specifically for men. As is the case for women, such an offer should also include access to traditional healing resources.

The establishment of family service centres and increased funding are other possible solutions. Family service centres provide a safe place where single people, couples and families can go for counselling and support. These establishments encourage the use of traditional help and support models.

Here again, the committee members note the absence of resources, which could be rectified through the implementation of a specialized court with province-wide jurisdiction (see section 4.7: Establishing a specialized sexual assault and domestic violence court in an Indigenous context).

4.5.4 Language barrier

Several organizations have identified the language barrier as an additional obstacle to access to justice and services, citing an insufficient number of court interpreters, the lack of information documents and forms in English or Indigenous languages, the fact that francophone professionals are unable to support allophone victims in Itinerant Court, etc.⁵¹ Therefore, they are requesting better access to translation/interpreting services and recommend "making permanent Indigenous language translation and interpretation services accessible across Québec, for example by setting up, as recommended by the Viens Commission, a centralized government pool of interpreters and translators,"⁵² or by recruiting interpreters in partnership

⁴⁹ Testimony during consultation with organizations in 2020: Rainbow Miller, Quebec Native Women.

⁵⁰ Testimony during consultation with organizations in 2020: Judith Morency, Psychologist, Ordre des psychologues du Québec.

⁵¹ Testimony during consultation with organizations in 2020: Josée Belisle, CALACS Abitibi; Nicole Wapistan and Odette Benjamin, Centre d'amitié autochtone de Sept-Îles; Isabelle Fortin, CAVAC de Sept-Îles; Donald Nicholls and Mtre Angeline Therrien-Lapointe, Department of Justice and Correctional Services, Cree Nation Government; Judith Morency, Psychologist, Ordre des psychologues du Québec; Dominique M.-Lavoie and Katy Tanguay, Service d'aide psychosociale du Cégep de l'Outaouais. Briefs: First Nations of Quebec and Labrador Health and Social Services Commission, 2020, p. 4; Barreau du Québec, 2020, p. 3 and p. 4; Department of Justice and Correctional Services, Cree Nation Government, 2020, p. 2.

⁵² Testimony during consultation with organizations in 2020: Donald Nicholls and Mtre Angeline Therrien-Lapointe, Department of Justice and Correctional Services, Cree Nation Government. Brief: Department of Justice and Correctional Services, Cree Nation Government, 2020, p. 6.

with the communities.⁵³ Moreover, they point out that it is important to avoid asking a member of the community to act as a translator/interpreter in the context of the justice system, “because it’s dangerous since everyone knows each other.”⁵⁴

Echoing the recommendation of the Viens Commission, some organizations suggest creating a centralized pool of translators and interpreters. It is important that these individuals have no ties, whether close or distant, to the case at hand so as to avoid prejudicing the victim. Therefore, the ability to speak both languages must not be the only criterion to be considered for inclusion in the pool.

We have previously recommended creating a pool of accredited translators and interpreters (see Chapter 3, paragraph 3.1.2.4). It goes without saying that the pool must meet the Indigenous communities’ needs and that the impartiality of the translators and interpreters must be established through objective criteria that address the communities’ concerns.

4.5.5 Difficulty in obtaining services due to sharing of powers

Quebec Native Women argues that the sharing of powers between the provincial and federal authorities makes it complicated for Indigenous victims to seek help:

“They often find themselves being bounced from one service to another because of Health Canada’s jurisdiction over “on-reserve” services or due to their “Indian status.” In other words, a request for service can be made more complex by these realities, which are specific to First Nations. A woman will sometimes abandon her request for assistance, as it is too complicated to navigate a system in which certain public or support services will refer her to another jurisdiction to ensure that the requisite costs of the service are covered.”⁵⁵

The organization therefore requests that an Indigenous victim services program be developed based on Jordan’s Principle,⁵⁶ which states that the first service contacted assumes all service and transportation costs: “in case of a conflict of jurisdiction, the government of first contact pays for the required services and then only takes further steps for a cost-sharing arrangement.”⁵⁷

These services must have a holistic vision of the solution to violence⁵⁸ and use an approach solidly based on identity acknowledgment and cultural safety.⁵⁹

Recommendation 22: Apply Jordan’s Principle to Indigenous victims of sexual assault and domestic violence.

⁵³ Testimony during consultation with organizations in 2020: Josée Bélisle, CALACS Abitibi.

⁵⁴ Id.

⁵⁵ Brief: Quebec Native Women, 2020, p. 3. Testimony during consultation with organizations in 2020: Rainbow Miller, Quebec Native Women.

⁵⁶ Indigenous Services Canada (2018). *Definition of Jordan’s Principle according to the Canadian Human Rights Tribunal*. Taken from: <https://www.sac-isc.gc.ca/eng/1583700168284/1583700212289>: “In recognition of Jordan, Jordan’s Principle provides that where a government service is available to all other children, but a jurisdictional dispute regarding services to a First Nations child arises between Canada, a province, a territory, or between government departments, the government department of first contact pays for the service and can seek reimbursement from the other government or department after the child has received the service.

It is a child-first principle meant to prevent First Nations children from being denied essential public services or experiencing delays in receiving them.”

⁵⁷ Brief: Quebec Native Women, 2020, p. 3. Testimony during consultation with organizations in 2020: Rainbow Miller, Quebec Native Women.

⁵⁸ Testimony during consultation with organizations in 2020: Donald Nicholls and Mtre Angeline Therrien-Lapointe, Department of Justice and Correctional Services, Cree Nation Government. Brief: Department of Justice and Correctional Services, Cree Nation Government, 2020, p. 5.

⁵⁹ Brief: Quebec Native Women, 2020, p. 3. Testimony during consultation with organizations in 2020: Rainbow Miller, Quebec Native Women.

4.6 The need for training

One element unanimously agreed upon, both in the consultations led by the committee and in the written testimonies gathered on the subject, is the lack of knowledge on the part of the workers and stakeholders within the system about the realities of Indigenous people: “The people working through the system do not have access to Indigenous culture or representations of the world, or to the elders and their positive input. They are limited to their own perceptions and do not work effectively in intercultural situations. They have a limited understanding of the way the other person sees the problem and the solution.”⁶⁰

The people we met with felt that the Québec justice system (i.e., civil servants, lawyers, judges, etc.) lacks knowledge about the history and current realities of Indigenous people. They noted that the Québec justice system does not take sufficient account of the specific context surrounding the lives of First Nations and Inuit people.

Stressing that Indigenous references and ways of interacting differ from those of the dominant Québec culture, they emphasized the fact that the actors should become familiar with the culture of the community they are working in and vice versa.⁶¹ Thus, many organizations noted the need to continuously train and raise the awareness of the system’s workers and stakeholders about Indigenous realities and ways of providing culturally relevant, safe services.⁶²

Many felt that Indigenous people’s ways of relating to one another, their often different notion of time and space, their ways of behaving and their social rules and skills are all factors that, if not well known and understood, can lead to misunderstandings and judgments that are likely to result in biases and incorrect conclusions that do not reflect reality.

Recommendation 23: Provide all judges and prosecutors working with offenders and victims from Indigenous communities with ongoing training on topics including:

- **Underlying historical factors contributing to sexual assault and domestic violence in Indigenous communities:**
 - **Sociohistorical data.**
 - **Impacts on living conditions of Indigenous people in the communities and in urban environments.**
- **Means of expression, non-verbal communication and body language:**
 - **Ways of relating to one another, social rules and skills that may adversely affect the witnesses’ credibility.**
- **Different conceptualizations of the justice system:**
 - **Concepts of Indigenous justice.**

4.7 Establishing a specialized sexual assault and domestic violence court in an Indigenous context

The objective of establishing a specialized sexual assault and domestic violence court is to provide better support services for all victims, both Indigenous and non-Indigenous. Quebecers already benefit from support services and the establishment of a specialized court would ensure their incorporation into the justice system (see Chapter 12). However, the situation is different for Indigenous people, who have no access to services adapted to their needs, whether in large urban centres or remote regions. Therefore, a

⁶⁰ Testimony during consultation with organizations in 2020: Judith Morency, Psychologist, Ordre des psychologues du Québec.

⁶¹ Id. Brief: Department of Justice and Correctional Services, Cree Nation Government, 2020, p. 4.

⁶² Testimony during consultation with organizations in 2020: Rainbow Miller, Quebec Native Women; Isabelle Fortin, CAVAC de Sept-Îles; Donald Nicholls and Mre Angeline Therrien-Lapointe, Department of Justice and Correctional Services, Cree Nation Government; Dominique M.-Lavoie and Katy Tanguay, Service d’aide psychosociale du Cégep de l’Outaouais; Judith Morency, Psychologist, Ordre des psychologues du Québec. Briefs: First Nations of Quebec and Labrador Health and Social Services Commission, 2020, p. 5; Commission des services juridiques, 2020, p. 8; Quebec Native Women, 2020, p. 4; Réseau des CAVAC, 2020, p. 5; CDPDJ, 2020, p. 5; Barreau du Québec, 2020, p. 4; Department of Justice and Correctional Services, Cree Nation Government, 2020, pp. 3 and 4.

specialized sexual assault and domestic violence court should be established with more than just the *integration* of services in mind; it should also focus on the *development* and *structuring* of services destined for this segment of the population.⁶³ Such services must meet the psychosocial and legal needs of victims and must clearly accommodate restorative justice initiatives for adult victims:

- Such a specialized court with Québec-wide jurisdiction cannot be equitably established in the absence of psychosocial support services for First Nations and Inuit people. To acknowledge the specificity of these services and address current shortcomings, we suggest setting up establishments for Indigenous people based on the South African Thutuleza Care Centre model. For the time being, we suggest calling this type of establishment a *Centre intégré d'aide et de services holistiques des Premières Nations et Inuits en matière d'agressions sexuelles et de violence conjugale* [integrated support and holistic services centre for First Nations and Inuit victims of sexual assault and domestic violence].
- The *Centre intégré d'aide et de services holistiques des Premières Nations et Inuits en matière d'agressions sexuelles et de violence conjugale* would address sexual assault and domestic violence from a global perspective that takes into account all aspects of these issues for Indigenous people. These services would be culturally relevant and safe.
- Establishing one or more of these integrated support and holistic service centres would involve hiring a permanent team of psychosocial workers, prosecutors, general practice lawyers, police officers, doctors and nurses for each centre. The permanent team may be required to travel to certain neighbourhoods or communities to respond to the needs of the people affected.
- The purpose of the integrated support and holistic services centres is not only to support victims throughout all stages and at all levels of the traditional legal process, but also to propose restorative justice options for adult victims. Such options must be deployed through pre-trial diversion and alternative measures programs.⁶⁴ The specialized court must also take these options into consideration at the sentencing stage, as authorized under subsection 718.2 e) of the Criminal Code.

In short, a *Centre intégré d'aide et de services holistiques des Premières Nations et Inuits en matière d'agressions sexuelles et violence conjugale* would offer Indigenous victims the same advantages as non-Indigenous victims by developing and providing culturally relevant services. As stakeholders, the centres are necessary for the specialized court to function in an Indigenous context.

Recommendation 24: Establish a *Centre intégré de services holistiques des Premières Nations et Inuits en matière d'agressions sexuelles et violence conjugale* that would function alongside the specialized sexual assault and domestic violence court.

⁶³ Brief: Barreau du Québec, 2020, p. 3: Moreover, the Barreau du Québec has made a similar recommendation, i.e., that “specialized services for homeless Indigenous and Inuit women, particularly in Montréal, who are victims of sexual assault or domestic violence be developed with a focus on housing, psychosocial services, legal aid, etc.”

⁶⁴ Criminal Code, section 717.

