

ARTICLE

“NONE OF THAT PAPER STUFF WORKS”: A CRITIQUE OF THE LEGAL SYSTEM’S EFFORTS TO END DOMESTIC ASSAULT IN NUNAVUT

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CITED: (2014) 19 Appeal 43–62

INTRODUCTION.....	44
I. NUNAVUT AND THE INUIT COLONIAL EXPERIENCE	46
A. Foreign Justice	48
II. LEIGH GOODMARK’S ANTI-ESSENTIALIST FEMINISM.....	49
A. Taiaiake Alfred’s Anti-colonial Prescriptions.....	50
III. THE PUBLIC PROSECUTION SERVICE OF CANADA’S NO-DROP POLICY	51
A. No-Drop prosecution	51
B. Diversion Skepticism	52
C. Reluctant Witness Support.....	53
D. The “Special Circumstances” of the Territories	53
IV. <i>FAMILY ABUSE INTERVENTION ACT</i>	54
A. Evaluation: EPOs.....	55
B. Evaluation: CIOs	56
C. Conclusions on the FAIA.....	58
V. RANKIN INLET SPOUSAL ASSAULT PROGRAM	58
A. Evaluation	59
FURTHER STEPS AND CONCLUSIONS	60

* Chris Durrant graduated from McGill University’s joint BCL/LLB program in December 2013. This paper was written for the McGill International Human Rights Internship Seminar following a placement with Maliiganik Tukisiiniakvik Legal Services in Iqaluit, Nunavut. Chris would like to thank Professor Nandini Ramanujam for her comments and guidance, and Laura Browne for her help with the editing process. He is also grateful for Nicholas McDonald and the Appeal editorial committee’s contributions to the paper.

INTRODUCTION

On April 1, 1999, Canada's newest territory, Nunavut, came into existence. The division of the Northwest Territories into two jurisdictions was the result of more than a decade of negotiations between Inuit representatives and the federal government. In the new eastern Arctic territory, Inuit would make up the vast majority of the population as opposed to the previous situation of sharing the Northwest Territories with sizable First Nations and European populations.

The hope of the Inuit who negotiated the agreement was that Nunavut's new government would incorporate traditional Inuit values into its institutions and processes.¹ The goal was a poignant one. During the twentieth century, the Canadian government's colonial and assimilating policies as well of the deployment of the Royal Northwest Mounted Police drastically changed the Inuit way of life. Decisions were taken without any consideration of Inuit traditions, and institutions reflecting European values were imposed. The creation of Nunavut represents the potential to decolonize the territory.

Though the Inuit are now in control of the formal mechanisms of government in the territory, the colonial period has left deep scars. The territory struggles with high levels of suicide and substance abuse. Among the most troubling are the territory's rates of family violence. Based on police-reported data, 1,132 Nunavummiut² were victims of family violence in 2010.³ Half of those victimized were assaulted by their spouse.⁴ The rate of family violence is the highest in Canada, and a Nunavummiuq is 17 times more likely to be a victim of family violence than someone who lives in Ontario, Canada's province with the lowest rate of family violence.⁵ Surveys have shown that women disproportionately bear the burden of this violence. Fifty-two per cent of women have experienced at least one act of physical violence in their adulthood (as opposed to forty-six per cent of men), and twenty-seven per cent have experienced forced sexual activity or attempted forced sexual activity (compared with five percent of men).

In light of the drastic statistics, a variety of organizations in the territory have attempted to address the problem through legal means. The territorial government has passed the *Family Abuse Intervention Act*,⁶ which created both new legal procedures for addressing domestic abuse, and the position of Community Justice Outreach Worker to help facilitate the use of the procedures. The Public Prosecution Service of Canada (PPSC), which continues to act in the territory independently of the Nunavut government, has also addressed the problem through a set of policies specific to domestic violence and the North.⁷ Additionally, Rankin Inlet's Pulaarik Kablu Friendship Centre has launched a

1 Graham White, "Governance in Nunavut: Capacity vs. Culture" (2009) 43 *Journal of Canadian Studies* 57.

2 Nunavummiut is the plural demonym for the residents of Nunavut. Nunavummiuq is the singular demonym. Use of the word Nunavummiut implies that numbers include Nunavut's non-Inuit residents as well the Inuit population. According to the 2011 census, Inuit make up 85.4 percent of Nunavut's population (Statistics Canada, *2011 National Household Survey: Aboriginal Peoples in Canada: First Nations People, Metis and Inuit*, online: Statistics Canada <<http://www.statcan.gc.ca/daily-quotidien/130508/dq130508a-eng.htm>> [Statistics Canada, *2011 National Household Survey*]).

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

4 *Ibid.*

5 *Ibid.*

6 *Family Abuse Intervention Act*, S Nu 2006, c 18.

7 Public Prosecution Service of Canada (PPSC), *The Federal Prosecution Service Deskbook* at ch 28, online: PPSC <<http://www.ppsc-sppc.gc.ca/eng/fps-sfp/fpd/toc.html>> [PPSC, *Deskbook*].

spousal-assault pilot project, which among other things provides a counseling program for those who have plead guilty to domestic assault.⁸

Attempting to address the problem is commendable, but addressing the high rates of domestic violence requires sensitivity to the particular situation of the territory and its residents. Female Inuit survivors of spousal abuse experience marginalization based on both their gender and indigeneity, and often other factors like poverty and disability. Legal reforms intended to combat spousal abuse in Nunavut face an intersectional challenge; they must simultaneously strive to overcome the complex challenge of addressing both the patriarchal as well as colonizing nature of the justice system in Canada. A project that ignores either element, or the interaction between them, is likely to end in failure or even exacerbate the problems it aims to solve.

Given the high-stakes the issue, the guiding question of this paper is whether these organizations have designed their programs to suit the gendered nature and colonized location of the problem at hand. To evaluate, the aforementioned programs will be assessed through two different lenses. The first is feminist scholar Leigh Goodmark's anti-essentialist lens.⁹ Rather than reducing women's narratives into a unitary universal female experience, Goodmark recognizes the intersectionality of different sites of subordination. Consequently, though her writing focuses on critiquing laws aimed at decreasing domestic assault in the American context, her theory is easily adapted to the colonial context in which Nunavut's Inuit women live.

The second lens is that of anti-colonialism, as explored through Mohawk scholar Taiaiake Alfred's conceptions of decolonization and colonialism's relationship with spousal abuse.¹⁰ Inuit elders are clear that the current generation experiences much more domestic violence than they did prior to colonization.¹¹ As the colonial experience has corresponded with the development of domestic violence in Nunavut, anti-colonial theory will be used to assess whether domestic violence initiatives address the historical and political background of the current crisis. Given how crucial the colonial context is to this analysis, a short history of the Inuit colonial experience is given at the beginning of the paper.

The end result of applying both a feminist and anti-colonial lens is that none of the current initiatives are without their faults, though some are far more problematic than others. Anti-essentialism effectively highlights when the state restricts women's agency, while the anti-colonial perspective is particularly critical of the existence of the state in its current form. How Nunavut could better shape the legal system's response to domestic violence is explored in the conclusion.

8 Pauktuutit Inuit Women's Association, *Research Report: Applying Inuit Cultural Approaches in the Prevention of Family Violence and Abuse* (30 April 2005), online: Pauktuutit <http://pauktuutit.ca/wp-content/blogs.dir/1/assets/InuitAbusePrevention_e.pdf>.

9 Leigh Goodmark, "Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases" in Leigh Goodmark, *From the Selected Works of Leigh Goodmark* (February 2009), online: SelectedWorks <http://works.bepress.com/leigh_goodmark/6> [Goodmark, "Autonomy Feminism"]; Leigh Goodmark, "Reframing Domestic Violence Law and Policy: An Anti-Essentialist Proposal" (2009) 31:39 *Journal of Law and Policy* 39 [Goodmark, "Reframing"]; Leigh Goodmark, *A Troubled Marriage: Domestic Violence and the Legal System* (New York: New York University Press, 2012) [Goodmark, *A Troubled Marriage*].

10 Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Oxford: Oxford University Press, 2009) at 59.

11 Janet Billson, "Shifting gender regimes: The complexities of domestic violence among Canada's Inuit" (2006) 30 *Etudes/Inuit/Studies* 73.

I. NUNAVUT AND THE INUIT COLONIAL EXPERIENCE

High rates of violence are not the only problems plaguing Nunavut. On almost every measure of human development Nunavut ranks far behind the rest of the Canadian population. Life expectancy in the territory is 73 years, far below the Canadian average of 81.6 years.¹² Nunavut also has the lowest average years of schooling in the country, with an average of 10.9 years per person, compared to the Canadian average of 12.5.¹³ The education numbers likely don't accurately reflect the real situation; some Inuit graduates report their education doesn't compare to the educations obtained by non-aboriginal Canadians.¹⁴ The result is that the issues in the educational system compound into other problems. Since becoming a territory separate from the Northwest Territories, Nunavut's government has been trying to decrease dependency on southern professionals, and build its administrative capacity. The Canadian Auditor-General reported however that twenty-three percent of public service positions go unfilled while the territory has a twenty per cent unemployment rate.¹⁵ This capacity deficit will have to be fixed if Nunavut is going to meet other growing problems. The territory has the highest birthrate in Canada, with half the territory's population under the age of twenty-five.¹⁶ Among other things, this population boom has caused a housing crisis. Nunavut Tunngavik Inc. has warned that social problems to become "exponentially worse" if housing is not able to keep pace with population growth.¹⁷ Additionally, other reports indicate that 7 in 10 preschoolers come from houses without adequate food.¹⁸ It is very likely that many of Nunavut's biggest challenges lie ahead of it.

From an outsider's perspective, it is easy to dismiss the hardships faced by the people of Nunavut as a result of their isolated location and the area's daunting climate. It is easy to forget that prior to contact, the Inuit thrived on the land.¹⁹ The territory's current conditions can only be explained through the story of contact and colonization. Interactions with Canada's southern population literally reshaped the Inuit's way of life. Before contact, the Inuit lived in nomadic communities consisting of a few families, totaling around 40 or 50 people.²⁰ In contrast, the population of Nunavut now lives in just 27 communities, with populations ranging from 200 to 7000 people.²¹ Many factors combined to end the nomadic way of life, including trade, an influx of southern labourers, residential schools, forced relocation and the slaughter of sled dogs.

The Inuit had been trading furs at European whaling camps since the early nineteenth century. The introduction of rifles caused the loss of some traditional hunting techniques,

12 Elspeth Hazell, Kar-Fai Gee and Andrew Sharpe, *The Human Development Index in Canada: Estimates for the Canadian Provinces and Territories, 2000-2011* (Centre for the Study of Living Standards, May 2012) at 23-24, online: Centre for the Study of Living Standards <<http://www.csls.ca/reports/csls2012-02.pdf>>.

13 *Ibid* at 26.

14 National Committee on Inuit Education, *First Canadians, Canadians First: National Strategy on Inuit Education 2011* (Inuit Tapiriit Kanatami, May 2011) at 67, online: <<https://www.itk.ca/publication/national-strategy-inuit-education>>.

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

16 *Ibid*.

17 Nunavut Tunngavik Incorporated, *2010-2011 Annual Report on the State of Inuit Culture and Society: The Statuts of Inuit Children and Youth in Nunavut* (Nunavut Tunngavik Incorporated) at 40, online: <<http://www.tunngavik.com/files/2012/11/2010-11-SICS-Annual-Report-Eng.pdf>>.

18 *Ibid*.

19 John Roy Bennet and Susan Rowley, *Uqalurai: An Oral History of Nunavut* (Montreal: McGill-Queen's University Press, 2008) at xxv.

20 Billson, *supra* note 11 at 4.

21 *Ibid*.

and trade also changed some food and clothing preferences.²² Eventually, a decline in the price of furs affected the Inuit's ability to obtain needed goods. In 1949, the Government of Canada began paying family allowances to the Inuit in the form of credit at trading posts. This had the effect of incentivizing settling near town, which in turn increased competition for game and other resources.²³ These events not only fundamentally changed the Inuit way of life, but put them in constant contact with a government that has rarely understood Inuit interests.

Between 1950 and 1957, 1,646 Inuit residents of the Northwest Territories attended residential school.²⁴ While the shift to permanent settlements facilitated access to day schools, many families were forced to send their children to boarding schools, often by government agents who threatened to cut off the Family Allowance if children did not attend.²⁵ Those who experienced the residential school system are called the "lost generation."²⁶ They underwent a "loss of culture, family-bonding, self-esteem as a result of government and paternalism and prejudice"²⁷ and returned home struggling to cope with the "physical, sexual, psychological and spiritual abuse" they had suffered.²⁸ Residential schools also introduced the practice of physically disciplining children into the culture.²⁹ Prior to settlement, children were disciplined without corporal punishment or verbal derision.³⁰

Another example of the Canadian government's colonial influence over the Inuit is the forced relocation program of the 1950s. In an effort to protect sovereignty over its arctic possessions, the Canadian government pressured a number of Inuit families from northern Quebec and the hamlet of Pond Inlet to relocate to barely habitable land above the Arctic Circle, creating the communities of Resolute and Grise Fiord. When some families asked to be returned to their original homes, the government refused. The Royal Commission on Aboriginal Peoples called the relocation "one of the worst human rights violations in the history of Canada."³¹ Martha Flaherty, relocated at the age of five, likened the experience to "having her childhood taken away."³²

Finally, the presence of government officials in the Inuit communities had traumatizing effects. In the 1950s, the construction of the Distant Early Warning Line radar devices

22 Shelagh D Grant, *Arctic Justice: On Trial for Murder, Pond Inlet 1923* (Montreal: McGill-Queen's University Press, 2002) at 22-23.

23 *Ibid* at 250.

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

25 *Ibid* at 15.

26 *Ibid* at 17.

27 *Ibid* at 16.

28 Marius Tungilik, "Survivor Stories" in *We Were So Far Away: The Inuit Experience of Residential Schools*, online: *We Were So Far Away* <<http://weweresofaraway.ca/survivor-stories/marius-tungilik/>>.

29 King, *supra* note 24 at 16.

30 Uqsuralik Ottokie, born in 1924 near Cape Dorset, Nunavut, articulated her views on child rearing as "[when] you show the child pure, unconditional love, without raising your voice to them, without being physically abusive, they grow beautifully." Given the high rates of violence experienced by children in Nunavut, Ottokie's words speak to a drastically different pre-colonial experience (Naqi Ekho and Uqsuralik Ottokie, *Interviewing Inuit Elders Volume 3: Childrearing Practices*, ed by Jean Briggs (Iqaluit: Nunavut Arctic College, 2000) at 70). See also Janet Billson & Kyra Mancini, *Inuit Women: Their Powerful Spirit in a Century of Change* (Plymouth: Rowman and Littlefield Publishers, 2007) at 79.

31 Nunavut Tunngavik Incorporated, "Background" in *The Arctic Exile Monument Project*, online: Tunngavik <<http://www.tunngavik.com/current-initiatives/past-projects/arctic-exile-monument-project/background/>>.

32 Marquise Lepage, director, *Martha of the North* (National Film Board of Canada, 2009).

caused an influx of southern laborers to the territory, which in turn led to an increased police presence.³³ Soon after, the Inuit witnessed a rapid decline in the population of their qimmut, or sled dogs. While the spread of communicable dog diseases and the increasing presence of snowmobiles were connected to the decline, the RCMP also shot many of the highly-prized dogs to enforce a government-imposed ordinance that had no connection to the needs of the community, or simply as a tactic to intimidate and coerce the Inuit.³⁴ It is estimated that at least 1,200 dogs were killed in the Baffin Region alone.³⁵ The loss of dogs meant a life-long end to hunting for some individuals.³⁶

A. Foreign Justice

Before considering the way in which the law could play a role in ending domestic violence in Nunavut, the historical interaction of the residents of the territory and the law itself must be understood. Traditionally, behaviour was regulated through the distinct, but interrelated concepts of Tirigusuusiit (things that have to be avoided), Maligait (things that have to be followed) and Piquajait (things that have to be done).³⁷ These concepts related not only to social relations, but to subjects like the treatment of wildlife and proper behaviour in relation to the weather.³⁸ Prior to contact, the small size of Inuit communities meant that disputes were settled using “informal law-ways.”³⁹ Elders recall that bad behaviour was corrected through counseling the offender.⁴⁰ While elders were highly respected, they did not occupy formal roles⁴¹ and they did not consider themselves agents of social control.⁴² Nonetheless, because an individual could endanger a community’s survival, people who were unwilling to listen to the elders were sometimes killed, often by close kinsmen taking responsibility for their relative’s actions.⁴³

These traditions were disturbed when the RCMP began to set up detachments in the region in 1903.⁴⁴ By the 1920s, a string of detachments were set up in the Eastern Arctic region, and the clash of justices began.⁴⁵ The way Canadian law ran roughshod over Inuit society is exemplified by one of the first murder trials held in the territory. In 1922, an Inuit man named Nuqallaq killed a deranged trapper who had threatened to shoot people’s dogs unless they handed him their furs. Nuqallaq acted with the permission of his community, in conformity with the Inuit practice of killing those who endangered the group’s survival. In an effort to display sovereignty over the territory, the RCMP charged Nuqallaq with murder and he was convicted of manslaughter.⁴⁶

33 Dorothy Harley Eber, *Images of Justice* (Montreal: McGill-Queen’s University Press, 1997) at 16.

34 Qikiqtani Truth Commission, “Inuit Sled Dogs in the Baffin Region, 1950 to 1975”, online: Qikiqtani Truth Commission <<http://www.qtcommission.com/actions/GetPage.php?pageId=39>>.

35 *Ibid*

36 *Ibid*.

37 Mariano Aupilaarjuk et al, *Interviewing Inuit Elders Volume 2: Perspectives on Traditional Law* (Iqaluit: Nunavut Arctic College, 1999) at 13.

38 *Ibid* at 5

39 Natalia Loukacheva, *The Arctic Promise: Legal and Political Autonomy of Greenland and Nunavut* (Toronto: University of Toronto Press, 2007) at 102.

40 Aupilaarjuk, *supra* note 37 at 43.

41 *Ibid* at 2.

42 *Ibid* at 3.

43 Eber, *supra* note 33 at 15.

44 *Ibid* at 14.

45 *Ibid*.

46 After serving more than a year in prison in Manitoba, some officials involved in his prosecution secured an early release for Nuqallaq based on the fact he had become severely ill. He was returned to Baffin Island, a move that accidentally introduced tuberculosis to the area (Grant, *supra* note 22 at 5, 244).

Not all cases ended so unjustly. The first Chief Justice of the Northwest Territories (as Nunavut was then) was known for his attempts to fit the law to the realities of the territory. He would hold jury trials, exercise his discretion in sentencing, and rarely accepted guilty pleas.⁴⁷ However, even with attempts at adaptation, the end result was still one culture forcing its law on another. Interviews with Inuit elders have found them disappointed with the emphasis on punishment in the system, and longing for a synthesis of Western and Inuit culture in the law.⁴⁸ Additionally, none of the judges of the Nunavut Court of Justice are Inuit,⁴⁹ and there are only two practicing Inuit lawyers in the territory.⁵⁰ The majority of Nunavut's legislature may be Inuit, but the federal government still controls the criminal law.⁵¹ Former Crown prosecutor Pierre Rousseau has stated, "Nunavut's dysfunctional justice system destroys lives, ignores Inuit culture and is a major cause of inter-ethnic conflict"; he suggests that the Inuit should be allowed to solve their problems at the community level.⁵² Therefore, any efforts to curb domestic violence through the law must be cognizant of the fact that Nunavut's justice system began as a colonial imposition, which often operated in contradiction to Inuit values.

II. LEIGH GOODMARK'S ANTI-ESSENTIALIST FEMINISM

Just as the Inuit have had to cope with institutions that operate using inappropriate assumptions, many women have faced similar struggles. Anti-essentialist feminism recognizes this situation and responds by rejecting the notion of a unified female experience. Critical of theories that privilege a white, middle-class experience, anti-essentialist feminists recognize that women's experiences are complicated by race, ethnicity, class, sexuality and disability.⁵³ Anti-essentialists argue that women must be seen as individuals whose identities are constructed by the interplay of these and other characteristics.⁵⁴

Feminist scholar Leigh Goodmark has written persuasively on the importance of applying an anti-essentialist lens to domestic violence policies. Goodmark points out that early in the battered women's movement activists identified six goals that legal reform ought to pursue: (1) increasing victim safety; (2) stopping the violence; (3) holding perpetrators accountable; (4) divesting perpetrators of control; (5) restoring women who have been battered; and (6) enhancing agency of women who have been battered.⁵⁵ For Goodmark, policy-makers' ultimate goal when it comes to domestic violence should be to enhance women's agency.⁵⁶ Goodmark is clear that women should not have their choices made for them, or even be forced to choose from a prescribed set of choices, but instead be allowed to create and define their own choices.⁵⁷ She acknowledges that prioritizing agency over stopping the violence means that some women will be revictimized, but counters that others will be empowered by the ability to make choices for themselves.⁵⁸

The emphasis on agency comes from anti-essentialist skepticism over policy-makers' ability to craft policy with appropriate goals. When policies don't promote a woman's ability

47 Eber, *supra* note 33 at 24-25. The Inuit of the time had difficulty with the concept of moral or legal guilty because their language had no word that corresponded to guilty (Eber, *ibid* at 25).

48 Aupilaarjuk, *supra* note 37 at 7.

49 Nunavut Court of Justice, "Meet the Justices", online <<http://www.nucj.ca/judges.htm>>.

50 Mandy Samurtok, personal communication, 2 August 2012.

51 White, *supra* note 1 at 64.

52 Loukacheva, *supra* note 39 at 100.

53 Goodmark, "Autonomy Feminism", *supra* note 9 at 68.

54 *Ibid*.

55 *Ibid* at 5-6.

56 *Ibid*.

57 *Ibid* at 48.

58 *Ibid* at 71-72.

to make a choice, but instead craft predetermined goals, these goals reflect the white, middle-class experience, and consequently force an outcome that is only appropriate for addressing a narrow range of lived realities. The end result of essentializing policies is that women who have different goals and experiences because of their race, class, sexuality, disability and other sites of subordination are unable to pursue their own interests.⁵⁹

Goodmark has written specifically on some policies that are currently in place in Nunavut. Her emphasis on agency is particularly poignant when discussing Inuit women facing the challenges of having their agency denied because of their gender and indigeneity. Therefore Goodmark's anti-essentialist lens is appropriate for examining Nunavut's policies regarding domestic violence. Additionally, to ensure a full picture of the effects of the assessed policies, in addition to agency, the other five goals of the early battered women's movement will be referenced as well.

A. Taiaiake Alfred's Anti-Colonial Prescriptions

Mohawk scholar Taiaiake Alfred work is an excellent compliment to Goodmark's focus on agency. Alfred is a major proponent of the idea that Canada's relationship with aboriginal people should be characterized as an ongoing colonialism and that colonialism is reproduced through aboriginal government organizations based on settler governance concepts.⁶⁰ Of Nunavut, Alfred says "the Inuit people are now the titular heads of government, but the apparatus of government is staffed and controlled mainly by white southerners, and it operates in much the same way as the Canadian territorial government did in the period of open colonization."⁶¹ This observation does not just apply to the government structure in Nunavut, but as described earlier, the justice system as well. According to Alfred, Nunavut's problems cannot be fixed by staffing positions with Inuit employees alone, because there is limited potential for state apparatuses to foster decolonization. For Alfred, the decolonization process is not a collective or institutional one, but instead a shift "in thinking and action that emanate[s] from recommitments and reorientations at the level of the self that, over time and through proper organization, manifest as broad social and political movements to challenge state agendas and authorities."⁶²

According to Alfred's writings, domestic violence is one of the outcomes of the ongoing colonial experience. "Many men have added to Native women's oppression by inflicting pain on their wives[...]. [o]nce we fully understand the idea of oppression, it doesn't take much further insight to see that men's inability to confront the real source of their disempowerment and weakness leads to compound oppression for women."⁶³ Alfred suggests three prerequisites for recovery: "awareness of the pain's source; conscious withdrawal from an isolated unfocused state of rage; and the development of a supportive community and the courage to begin attacking the causes of discontent and deprivation."⁶⁴

Alfred's focus on colonial oppression as the source of domestic violence among First Nation peoples is what makes his theories relevant to other indigenous contexts. Worldwide there has been a correlation between the imposition of a colonial state on indigenous peoples and an increase in domestic violence in that community. Rates of

59 *Ibid* at 68.

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

61 Alfred, *supra* note 10 at 27.

62 Taiaiake Alfred & John Cornthassel, "Being Indigenous: Resurgences against Contemporary Colonialism" 40:4 *Government and Opposition* 597 at 611-612.

63 Alfred, *supra* note 10 at 59.

64 *Ibid* at 60.

spousal violence are high among the Navajo and the Maori despite a traditional respect for women.⁶⁵ Inuit women who remember the time before resettlement recount that “people considered family violence despicable” and while violence was not unknown at the time, the women believe there has been a “substantial increase in the rate of spousal abuse since resettlement.”⁶⁶ Given that the Inuit suffered through the same colonial oppression Alfred proposes as the cause of domestic violence, his prescriptions are highly relevant to the context, even if they were not directed specifically at the territory.

Alfred’s theories are also helpful because they address men’s role in domestic violence in a way anti-essentialist theory does not. It is notable that of the six goals of domestic violence policy identified by the battered women’s movement, only “stopping the violence” could involve changing the behaviour of abusive men, and the goal is not explicit that changing or healing men is part of the process. Consequently, Alfred’s anti-colonial analysis and his prescriptions for recovery compliment the battered women’s movement’s goals when analyzing policy. This added perspective informs much of the commentary and possible solutions discussed below.

III. THE PUBLIC PROSECUTION SERVICE OF CANADA’S NO-DROP POLICY

The Public Prosecution Service of Canada (PPSC) has policies on how to handle cases of domestic violence that are specific to Canada’s three territories. Three particular policies contained within the prosecutors’ policy manual (“the Deskbook”) guide prosecutors’ handling of domestic violence and have the effect of minimizing women’s agency in the context of domestic violence.

A. No-Drop Prosecution

The first anti-essentialist critique of the Deskbook is that complainants and victims are not able to have the charges against the alleged abuser dropped. The PPSC has sole discretion on whether to place and proceed with charges. The Deskbook’s policy does not remove prosecutor’s discretion on whether to proceed. Instead, it firmly reminds prosecutors of “the strong public interest in the denunciation and deterrence of spousal violence.”⁶⁷ According to the Deskbook, the following two considerations should not be taken into account when making decisions about pre-trial detention: 1) the likelihood of a victim cooperating with prosecution and 2) whether a couple will continue a relationship if the accused is granted bail. Instead prosecutors are to “consider any and all terms of release which are necessary to preserve the evidence, protect the complainant, and avoid

65 Traditionally among the Navajo, women shared equal and sometimes superior rights to men, rape was an almost unknown phenomenon, and “domestic violence and child abuse were known, but were an aberration” (Diane McEachern, Marlene Van Winkle & Sue Steiner, “Domestic Violence Among the Navajo” (1998) 2:4 *Journal of Poverty* at 35). In 1999, thirty-two percent of 600 major crimes reported on the Navajo reservation involved domestic violence (“Navajo Nation to Focus on Domestic Violence”, *Daily Courier* (Arizona) (1 November 1999) 3A, online: Google News <<http://news.google.com>>). Maori society traditionally held violence towards a woman as an affront to her and her extended family. Incidents were rare, and when they did occur, resulted in costly punishments to the abusive man’s extended family (Stephanie Milroy, “Maori Women and Domestic Violence: The Methodology of Research and the Maori Perspective” (1996) 4:58 *Waikato L Rev* at 71.). In 2010, fifty per cent of New Zealanders arrested for male on female violence were Maori even though the Maori only make up fifteen per cent of the country’s population (Heather Sharpe, “New Zealand Faces Its Dark Secret”, *BBC News Online* (29 January 2007), online: *BBC News Online* <<http://www.bbc.co.uk/news/>>).

66 Billson & Mancini, *supra* note 30 at 290.

67 PPSC, *Deskbook*, *supra* note 7 at ch 28, s 28.2.

the commission of any further offence.”⁶⁸ This policy prevents the victim from having any influence on the bail process.

Taking the victim’s discretion out of both the bail hearing and prosecution is a violation of women’s agency. While the woman’s safety is ostensibly protected, other interests she might have placed above her safety may suffer. The loss of the male member of the family can mean a loss of income, or for families where hunting is a crucial part of the home economy, food. Even when an unemployed man is arrested, it can mean deprivation as social assistance payments are not paid when a person is incarcerated.⁶⁹ While domestic violence does occur in financially secure families,⁷⁰ financial insecurity is often cited as a catalyst to domestic violence in the Inuit context.⁷¹ Thus, in the Inuit context specifically, the temporary absence of the abuser may create a situation more likely to encourage violence when he returns.

Beyond financial issues, the loss of the abuser can mean other deprivations. Abusive relationships are complicated and offenders often provide victims with emotional support as well as abuse.⁷² Some literature characterizes the detention of the offender as a second loss for the victim, the loss of the family member being its own calamity.⁷³ It may also deprive women of a tool in mediating their relationship; some women use police intervention as a signal to their husband that he has crossed a line and then drop the charges when the message has been received. No-Drop prosecution ends women’s ability to act in this way.⁷⁴

While the idea of violence is hard to stomach, No-Drop prosecution makes the assumption that women aim to sever ties with their abuser. Considering how interconnected people are with their partners through finance, children and family, this is not always a reasonable option. Given the small size of communities in Nunavut, interpersonal bonds may be life-long and very difficult to break. Taking choices away from women living in situations that are far from the experience of policy makers is paternalistic and fails to acknowledge the diversity of women’s interests.

B. Diversion Skepticism

The second PPSC policy related to domestic violence is that prosecution is seen as “usually” in the public’s best interest. Diversion programs are only to be considered in “exceptional circumstances.” The Deskbook requires that the complainant be willing to consider an alternate to prosecution, the violence was minimal, the offender has no record of previous violent offenses, the offender is willing to change, and a program that is likely to reduce violence is available.⁷⁵ While only the complainant’s willingness to have the case go to a diversion program appears to be mandatory, the long list of factors makes it seem as if diversion is a very limited option.

C. Reluctant Witness Support

Finally, the Deskbook instructs prosecutors to put a “reluctant witness” in contact with a victim witness assistant or another support person early in the process, and to consider

68 *Ibid* at ch 28, s 28.4

69 Statistics Canada, 2011 *National Household Survey*, *supra* note 2.

70 Billson, *supra* note 11 at 8.

71 Pauktuutit Inuit Women’s Association, *supra* note 8 at 4; Billson, *supra* note 11 at 8.

72 Arlene Weisz, “Legal advocacy for domestic violence survivors: The power of an informative relationship” (March/April 1999) 80:2 *Families in Society* 139.

73 Pauktuutit Inuit Women’s Association, *supra* note 8 at 14.

74 Leigh Goodmark, *A Troubled Marriage*, *supra* note 9 at 140-141.

75 PPSC, *Deskbook*, *supra* note 7 at ch 28, s 28.3.

measures such as barring the public from the court and placing a publication ban on the victim's identity.⁷⁶ Considering some jurisdictions force women to testify against their partners by holding them in contempt of court if they do not, it is encouraging that PPSC has chosen a less coercive approach. The policy appears to incorporate the conclusion of multiple studies that found women who receive advocacy services show increased commitment to the criminal justice process and are more likely to have their abusers found guilty.⁷⁷

Assuming that reluctant witness support increases successful prosecutions in Nunavut, the question must be asked, what is the outcome of these prosecutions? Experiences inside the American legal system suggest that participating in a successful prosecution can be empowering for women who are supported throughout the process.⁷⁸ However, given the Inuit's historical relationship with the justice system, there are questions as to whether the same gains in empowerment can be made in Nunavut's courts. According to Alfred, to create a legitimate post-colonial relationship, notions of European superiority must be abandoned and a mutually respectful stance adopted.⁷⁹ Successful prosecutions in the settler court system do not affirm the validity of indigenous conceptions of justice or rebuke the notion of European superiority. From an anti-colonial perspective, aiding in prosecution is more likely to further entrench a colonized mindset than to empower, despite any services provided to victims of abuse.

The effects on the abuser are very similar, as prosecution by the colonial court system is an un-empowering experience for men. The Royal Commission on Aboriginal Peoples stated that the humiliation and frustration that comes from the inequality between aboriginal and settler peoples is one factor that causes gendered violence.⁸⁰ It stands to reason a man who is incarcerated because his partner sought recourse from the settler justice system is likely to feel even more humiliation and frustration. One of the reasons identified as to why Inuit men abuse is that they lack respect for things they consider to be in the woman's domain, including their pain.⁸¹ Spending time immersed in a legally gendered space like prison is unlikely to change this. Unless highly effective counseling is provided, the goal of ending the violence is unlikely to be furthered by incarceration. Rather, violence is only likely delayed, and eventually turned on the original survivor, a new victim, or the abuser himself upon release.

D. The "Special Circumstances" of the Territories

Interestingly, the PPSC Deskbook justifies its agency-reducing policies through the "special circumstances" of Canada's northern territories. The abused spouse has no say in whether prosecution takes place because: "a) the victim may have no access to the same types of support often found in southern Canada, such as emergency shelters or counselling services; b) the victim may face pressure in the community not to report the crime; and c) absolute prohibitions on contact with the alleged abuser may be unrealistic in a small isolated community."⁸²

The three justifications cited are for the most part accurate. Nunavut only has three women's shelters, with many women in the west of the territory seeking refuge in

76 *Ibid* at ch 28, s 28.8.

77 Weisz, *supra* note 72 at 3.

78 *Ibid* at 10.

79 Alfred, *supra* note 10 at 87.

80 Billson & Mancini, *supra* note 30 at 4.

81 Pauktuutit Inuit Women's Association, *supra* note 8 at 6.

82 PPSC, *Deskbook*, *supra* note 7 at ch 28, s 28.2.

the shelter located in the Northwest Territories' capital, Yellowknife.⁸³ Nunavut's communities are certainly very small and people who have worked to encourage women to report domestic violence have experienced hostility from some community members.⁸⁴ Domestic violence is very likely underrepresented,⁸⁵ though the phenomenon of underreporting is not unique to Nunavut. With these facts in mind, the question is whether these special circumstances nullify Nunavut's other unique characteristics? Anti-colonial theory would suggest this is not the case. All three territories have large aboriginal populations; Nunavut's population is 85.4 per cent Inuit.⁸⁶ Having No-Drop prosecution aimed at the territories is a distinctly colonial measure. The policy restricts the choices of people already forced to participate in a foreign justice system. Alfred, who is clear that settler conceptions of justice are distinct from aboriginal conceptions of justice,⁸⁷ says that the colonial mentality "blocks recognition of the existence or viability of traditional perspectives."⁸⁸ Telling women that the settler legal system is the only way to resolve the power imbalance in their relationship furthers the colonial mentality, implicitly casts doubt on the validity of aboriginal traditions, and is a block to the creation of the supportive community Alfred argues is essential to ending aboriginal men's violence. No-Drop prosecution is a short-term solution that exacerbates a long-term problem.

IV. FAMILY ABUSE INTERVENTION ACT

Passed in 2006, the *Family Abuse Intervention Act* ("FAIA") was the Nunavut Legislature's attempt to implement legislation that allowed an alternative to formal legal proceedings to address situations of domestic violence.⁸⁹ In addition to passing the bill, the government created the position of Community Justice Outreach Worker (CJOW) in every hamlet to facilitate victims' use of the bill. Despite the government's initial commitment to alternative forms of legal proceedings, critics still consider the bill a failure and charge the government with neglecting the issue.⁹⁰ Anti-essentialist and anti-colonial lenses are helpful in understanding why the bill is held in such disrepute.

The FAIA creates a number of legal orders that can be sought, though only two have been used with any kind of regularity since its implementation.⁹¹ The first kind, Emergency Protection Orders ("EPOs") are designed for people in urgent situations. They can give the victim possession over the family dwelling and custody of the children, while putting a do-not-contact order on the abuser. Community Intervention Orders ("CIOs") differ in that they require the abuser and survivor to attend traditional Inuit counseling with a specified traditional counselor. Finally, while rarely used,⁹² Compensation Orders ("COs") allow survivors of abuse to seek financial compensation for property damage caused by abuse, as well as costs incurred in fleeing violence. COs are notable in that

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

84 Genesis Group, *Family Abuse Intervention Act: Implementation Evaluation* (2009) at 34. Available through Legislative Library of the Legislative Assembly of Nunavut.

85 Billson, *supra* note 11 at 73.

86 Statistics Canada, *2011 National Household Survey*, *supra* note 2.

87 Alfred, *supra* note 10 at 66.

88 *Ibid* at 94.

89 Genesis Group, *supra* note 84 at 25.

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

91 Genesis Group, *supra* note 84 at 25-26.

92 *Ibid* at 56.

most other jurisdictions do not have as robust a way of getting financial assistance to survivors of abuse.

In addition to the CIOs and COs, which represent novel court orders, the *FAIA* is innovative in other ways. The *Act* is unprecedentedly broad in its definitions of who can avail themselves of its protections, defining family abuse as something that can take place among people in “intimate”, “family”, or “care” relationships.⁹³ The *FAIA* is clearly cognizant of the fact that due to housing shortages, many Inuit have no choice but to live in close quarters with parents, children or friends.⁹⁴ The *Act*’s willingness to cover whomever may be in a household is a clear signal to those enforcing the law that they should be open to atypical abusive relationships, and represents a move away from essentialism in domestic abuse policy.

In addition to a broad array of orders available for a broad array of people, the *FAIA* is designed with a streamlined process for obtaining the orders. To obtain an EPO or CIO a one page form must be filled out and faxed to the offices of the Justices of the Peace (“JP”). The office immediately sets up a time for an *ex parte* hearing, to be held over the phone.⁹⁵ If the JP is satisfied, the order is granted immediately. Within five days, the order is reviewed by a judge of the Nunavut Court of Justice. The judge either confirms the JPs decision, or orders a *de novo* hearing of the matter.⁹⁶ Respondents to the order have 21 days to request a review of an EPO granted by a Justice of the Peace.⁹⁷

The *FAIA* also appears to recognize that some victims of abuse would likely need help in filling out forms and selecting from the wide array of options available. The legislation specifies that family members, lawyers, RCMP officers and “prescribed persons” can all apply for orders with the consent of the applicants.⁹⁸ The regulations clarify that prescribed persons are those occupying the Community Justice Outreach Worker position and those working at shelters.⁹⁹

A. Evaluation: EPOs

The design of the Emergency Protection Orders offers some respect for women’s agency. For example, the process of getting an EPO appears to allow a woman to avoid involving the RCMP if she wishes. She can fill out the forms herself, avoiding contact with all government officials, save for the hearing with a Justice of the Peace. If she requires assistance, CJOWs exist (in theory)¹⁰⁰ to help her select the restraints she wants against her partner. Ignoring all colonial dimensions that are still in place, the experience might be considered empowering.

Unfortunately, practice does not match up with theory. The problem with EPOs is that research shows they can endanger the safety of the women they are meant to protect. In

93 *Family Abuse Intervention Act*, *supra* note 6, s 2.

94 Cathleen Knotsch & Dianne Kinnon, *If Not Now...When?: Addressing the Ongoing Inuit Housing Crisis in Canada* (Ottawa: National Aboriginal Health Organization, 2011) at 24, 38, online: <http://www.naho.ca/documents/it/2011_Inuit-Housing-Crisis-Canada-FullReport.pdf>.

95 *Family Abuse Intervention Act*, *supra* note s 7; Genesis Group, *supra* note 134 at 15.

96 *Family Abuse Intervention Act*, *ibid*, ss 15-16.

97 *Ibid* at s 13.

98 *Ibid* at s 26(b).

99 *Family Abuse Intervention Regulations*, Nu Reg 006-2008, s 3.

100 For various reasons that go beyond the scope of this paper, the Community Justice Outreach Workers are reported to be largely a failure. They’ve been found to lack support or supervision (Genesis Group, *supra* note 84 at 32), that they don’t understand their duties (Genesis Group, *ibid* at 36) and that this ignorance of the *Family Abuse Intervention Act* by the CJOWs has hurt community awareness of the *Act* as well (Genesis Group, *ibid* at 6).

American jurisdictions that have civil protection orders, a large proportion of domestic violence occurs after restraining orders have been delivered.¹⁰¹ Women who have been separated from their abusive partner are also more likely to be victims of homicide than before the separation.¹⁰² The theory behind this violence is that abusers see their victim's obtaining of a civil order as an assertion of independence. The offender reacts by trying to reassert his power over his victim, usually through violence.

There are many factors that suggest that the problem could be just as bad or worse in Nunavut. Firstly, in theory, the EPO is delivered to the abuser by the RCMP. This could bring up the humiliation associated with settler-dominance of the justice system. Secondly, given the small size of many Nunavut communities, the idea of avoiding contact is impractical. Beyond that, enforcement of the orders is an issue. There might be two RCMP officers in a town of 300. How they are supposed to protect a woman against a partner wishing to reassert his power is unclear. Talking about EPOs and probation orders, one Nunavut resident said "[n]one of that paper stuff works...it's just paper and means nothing."¹⁰³ Clearly government orders alone cannot divest abusers of their power.

Making matters worse, Nunavut lacks the administrative capacity to effectively enact the EPOs. Most notably, EPOs were not added to the information available to the RCMP,¹⁰⁴ meaning the RCMP have been charged with enforcing orders they do not know exist. There have also been problems with EPOs that grant the victim exclusive use of the home. There have been at least three cases of women being ejected from houses they were granted exclusive use of, because their names were not on the lease, and public housing authorities claimed no knowledge of the housing provisions in the *FAIA*.¹⁰⁵ There have also been conflicts between social workers and women who have been granted exclusive custody of their children through EPOs.¹⁰⁶ Considering that the legislation is clear that EPOs take precedent¹⁰⁷ over the *Child and Family Services Act*¹⁰⁸, the *Children's Law Act*¹⁰⁹, the *Family Law Act*¹¹⁰ and the *Divorce Act* (Canada),¹¹¹ these incidents indicate poor implementation and promotion of *FAIA*.

B. Evaluation: CIOs

There is much to praise about Community Intervention Orders. They represent an anti-essentialist innovation in dealing with domestic abuse. Firstly, CIOs provide a form of relief for women in abusive relationships which does not require the separation of the parties. EPOs assume that a woman wants to leave the relationship, but are only hindered by concerns about children, housing, money and the abuser himself. CIOs respect that even with options to manage those matters, a woman may have other goals (like maintaining the marriage, not disrupting her social circle, or giving her children a father) that she wishes to pursue even if it means risking her safety. By providing women with a remedy that is not separation-based, women's agency is respected. Evidence in the

101 Goodmark, *Troubled Marriage*, *supra* note 9 at 83.

102 *Ibid.*

103 Genesis Group, *supra* note 134 at 56.

104 Genesis Group, *supra* note 134 at 50.

105 *Ibid* at 58.

106 *Ibid.*

107 *Family Abuse Intervention Act*, *supra* note 6, s 9.

108 *Child and Family Services Act*, SNWT 1997, c 13, as enacted for Nunavut, pursuant to the *Nunavut Act*, SC 1993, c 28.

109 *Children's Law Act*, SNWT 1997, c 14, as enacted for Nunavut, pursuant to the *Nunavut Act*, SC 1993, c 28.

110 *Family Law Act*, SNWT 1997, c 18, as enacted for Nunavut, pursuant to the *Nunavut Act*, SC 1993, c 28.

111 *Divorce Act*, RSC 1985, c 3.

government commissioned report on the *FAIA* suggests that CIOs are more appropriate in the Nunavut context because women who get an EPO usually get back with their partner within two or three days regardless of the order.¹¹²

CIOs are also important because they represent something of a legislative recognition that women may stay in abusive relationships. Women who stay in abusive relationships are often treated with skepticism when communicating their situation to judges, the police, or prosecutors—all of whom may work on the assumption that if a woman is not trying to leave a relationship, abuse is not actually happening.¹¹³ While legislative recognition of a fact is unlikely to change assumptions on its own, it represents a positive step.

While there are theoretical positives to CIOs, there are also some large practical problems. Given the often tragic results of restraining orders, CIOs may represent a safer option for women. However, this is far from certain. In the American context, court-ordered counselling only enraged some women's partners, resulting in more abuse.¹¹⁴ While there have not been any reports of counselling-inspired violence in Nunavut, evidence shows that CIOs have still been largely ineffective.

The first piece of evidence which demonstrates that CIOs are largely ineffective is the low rate of usage of the orders. From 2008 to 2010, there were twenty-two applications for CIOs, but only seven were granted.¹¹⁵ The low number of requests is explained by the very low level of awareness of the *FAIA* in Nunavut, and the ineffectiveness of the CJOWs. In addition, the fact that only a third of requests were granted raises questions. The government-requested report on *FAIA* describes the low rate of successful CIO applications as being outside the scope of the study, only explaining it as being caused by "sociological issues, personal considerations, and the application of legal theory."¹¹⁶ The lack of detail in the report is frustrating. Sociological issues could be a reference to essentialist and agency-denying ideas held by Justices of the Peace and judges, but without more detail, nothing can be said for certain.

The second issue with CIOs is that the "specified traditional Inuit counselor"¹¹⁷ the *FAIA* makes reference to is undefined, and is not a position that formally exists. The government-commissioned report on the *FAIA* makes it clear that Nunavummiut doubt that Inuit elders have the ability to effectively counsel domestic violence. Some informants even suggested that elders might condone physical discipline of a wife by her husband.¹¹⁸ At the same time, elders expressed an unwillingness to get involved in "family issues."¹¹⁹ It appears that the government of Nunavut thought it could have its legislation embrace traditional values at the same time as off-loading the cost of employing counselors.

Using Alfred's theory, there is more to be uncovered by analyzing CIOs than simply poor governance. A comment about traditional counselors from one of the *FAIA* report's informants brings the government's mistake to light: "*The elders were beaten or beat up people themselves – who wants counseling from those people?*"¹²⁰ Elders inside Inuit communities have been colonized just as much as anyone else. This has two outcomes.

112 Genesis Group, *supra* note 84 at 56.

113 Goodmark, *Troubled Marriage*, *supra* note 9 at 81.

114 Goodmark, "Reframing", *supra* note 9 at 14.

115 Genesis Group, *supra* note 84 at 51.

116 *Ibid* at 52.

117 *Family Abuse Intervention Act*, *supra* note 6 at s 17(2)a.

118 Genesis Group, *supra* note 84 at 52.

119 *Ibid* at 5.

120 *Ibid* at 51.

The first is that the healers need healing themselves. The second is that “communities lack the solid, well-defined cultural roles for elders and traditional teachers that [...] aid in the transition of knowledge and meaning.”¹²¹ By redirecting the responsibility for abusive relationships to elders, the government tried to unilaterally conjure up roles that no longer exist.

Alfred urges a more dynamic revitalization process. He suggests that if elders are not in a position to be able to offer support, the task of adapting and transmitting traditional wisdom should fall to scholars, writers and artists.¹²² Embracing the traditional wisdom does not mean that it must take the form of support from elders.

C. Conclusions on the FAIA

Together, EPOs and CIOs represent a commendable attempt at providing women with choices about how to manage domestic violence. Given that EPOs are hard to enforce, and may inspire violence, separation orders should be regarded skeptically and cannot be the sole solution for dealing with domestic violence. Nonetheless, to best respect women’s agency, EPOs should remain an option who may wish to manage their relationship through their use, and should be better supported by Nunavut’s government. CIOs are a positive innovation, in that they recognize separation as being frequently inappropriate in the Nunavut context. To make the orders workable however, large changes are needed. Given the low rates at which CIOs are granted, it appears Nunavut’s judges and JPs are not prioritizing women’s agency when making their rulings. If that is the case, one step in overcoming judicial mistrust of the order would be to build an effective counseling apparatus, with either counselors trained in academic institutions, or a community-based solution that either fills or complements the role elders once played.

V. RANKIN INLET SPOUSAL ASSAULT PROGRAM

Started in 2007, the Rankin Inlet Spousal Assault Program (RISAP) is Nunavut’s only spousal abuse counseling program.¹²³ The initiative is a pre-sentencing program, meaning that the program is available to those in the hamlet who have been charged with a domestic assault and have entered a guilty plea. If they successfully complete the program, the prosecution and defense ask for a conditional discharge as the sentence.¹²⁴ The RISAP also provides counseling to those who have been victims of spousal abuse and conducts outreach work to build awareness of family violence issues in the community.¹²⁵

The approach the program takes with offenders is a mixture of traditional knowledge and more conventional counseling. Offenders attend both individual and group counseling sessions. Elders are often invited to the group counseling sessions to talk about family life and resolving disputes without violence, as well to instill pride in traditional ways and boost self-esteem.¹²⁶ Elders who participate with the program are also available to provide guidance on issues besides family violence after the program is finished.¹²⁷ Interestingly, similar to the findings of the *FAIA* report referenced above, initially some elders did not condemn all forms of spousal violence. Program staff addressed the problem by

121 Alfred, *supra* note 10 at 171.

122 *Ibid.*

123 Department of Justice, *Rankin Inlet Spousal Assault Counselling Pilot Program Final Evaluation* (March 2007) at 1, online: RESOLVE Saskatchewan <<http://www.uregina.ca/resolve/PDFs/Rankin%20Inlet%20Evaluation.pdf>> [Department of Justice, Rankin Inlet]

124 *Ibid.*

125 *Ibid* at 4.

126 *Ibid* at 29.

127 *Ibid.*

clarifying the program's stance on spousal violence. The subsequent positive role played by the elders demonstrates that though they have been influenced by colonialism, it is not a bar to their participation in the program, it is merely a fact that has to be acknowledged and addressed.¹²⁸

A. Evaluation

The RISAP program is in line with the six values of the battered women's movement and acknowledge the realities of domestic abuse. There is no push for separation of partners and most couples stay together during the program.¹²⁹ Counseling for the survivors is available whether she stays with her partner or not.¹³⁰ This approach respects women's agency in a way that solutions that demand separation do not. The program may also help build agency: most of the survivors became employed or started a skills-enhancing program while attending the counseling.¹³¹

The fact the abusers may avoid jail time by completing the program is not necessarily contrary to the goal of holding perpetrators accountable. The program stresses that offenders recognize themselves as being held accountable for their actions.¹³² Being made to tell stories of the abuse they perpetrated is a form of accountability¹³³ and it could be argued to be a superior form of accountability than imprisonment, where the perpetrator does not have to address the reason for his incarceration.

In terms of stopping the violence, the program appears to be a success. Of 28 people who attended some of the program, only two were subsequently charged with assaults, and neither of those individuals had completed the entire program.¹³⁴ One assault took place in public against another male, while the other was the homicide of the original complainant.¹³⁵ While acknowledging this dreadful fact and recognizing it illustrates the high-stakes nature of these programs, these statistics seem to indicate that RISAP is highly successful. Nonetheless, given the RISAP's small sample size, and the fact that it has only been two to four years since the men have completed the program, the program's successes are tentative. At the same time, the results suggest that because of their colonial experience, counseling addressing Inuit men's specific issues may be particularly effective.

With positive results, it is tempting to avoid finding fault. However, anti-colonial thinking pushes for a more critical evaluation. According to Alfred, the format is an ideal site of decolonization: "the movement towards decolonization [...] will emanate from transformations achieved by direct-guided experience in small, personal, groups and one-on-one mentoring [...]."¹³⁶ The problem is the lack of decolonization in the program's curriculum. For Alfred, the first step to ending the internal colonialism that causes domestic abuse is to create awareness of the pain's source. A review of the curriculum of the group sessions for abusers shows the program does not emphasize this point. Most of the sessions deal with either anger-management techniques like time-outs, knowing your warning signs and awareness of stressors, or responsibility-centered

128 *Ibid* at 29.

129 *Ibid* at 7.

130 *Ibid* at 10.

131 *Ibid* at 33.

132 *Ibid* at 7.

133 Goodmark, *Troubled Marriage*, *supra* note 9 at 182.

134 Department of Justice, *Rankin Inlet*, *supra* note 123 at 4.

135 *Ibid* at 31.

136 Alfred & Cornthassel, *supra* note 62 at 613.

activities like debunking excuses for spousal abuse.¹³⁷ The closest that the program's group counseling comes to raising awareness of the pain's source are sessions where abusers write their life story with special attention to the losses suffered.¹³⁸ While some may draw the connection between their losses and the colonial experience, the program does not broach the subject.

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

FURTHER STEPS AND CONCLUSIONS

In Inuit mythology one of the most important figures is Sedna, the goddess of marine mammals. As marine mammals are an important source of food and skins for the Inuit, good relations with Sedna are key to the Inuit's survival. Though there are many versions of the story, there is a basic pattern of a young woman who is "mistreated, and then sacrificed for selfish reasons."¹³⁹ One version of the story tells of a woman who rejects her suitors, but is wooed by the spirit of a fulmar¹⁴⁰ who promises to take her to his lavish and well stocked home. Upon arriving the woman finds she was deceived. She is fed only fish and lives a miserable life in a drafty tent. The woman's father eventually hears of her situation and attempts to rescue her. The two attempt to escape by boat, but are caught by a swarm of fulmars. In an attempt to placate the birds, the father throws his daughter out of the boat. When she clings to the side, he uses his knife to cut off her fingers. As they fall in the ocean, the pieces of finger become the sea mammals while the woman is transformed into Sedna.¹⁴¹

Anyone who has been following Nunavut's attempts to eliminate domestic violence in the territory may see some parallels between the efforts of the father in the story, and the efforts of the government. An initial effort to save a woman in a bad relationship meets adversity and ultimately ends in betrayal. There are several examples to support this analogy. First, the government commissioned a report to evaluate the *Family Abuse Intervention Act* and received a largely negative report in February of 2010. Rather than act, the government waited until March 2011 to even table the report in the legislature.¹⁴² It is alleged that the government was delaying new legislation until after the 2013 election to avoid generating controversy.¹⁴³ A draft family violence strategy released in March 2013 was called "short on specific details"¹⁴⁴ and the Qikiqtani Inuit Association said it did not reflect a serious

137 Pulaarivik Kablu Friendship Center, *Spousal Abuse Counseling Program: Manual For Counselors* (2006) at 55, online: Public Safety and Emergency Preparedness Canada <<http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/spsl-bs-cnsIng/spsl-bs-cnsIng-eng.pdf>>.

138 *Ibid* at 114.

139 Neil Christopher, *Kappianaqtut: Strange Creatures and Fantastic Beings from Inuit Myths and Legends Volume 1* (Canada: Inhabit Media, 2011) at 21.

140 A fulmar is a northern sea bird.

141 Christopher, *supra* note 139 at 13, 21-23.

142 George, "Nunavut women", *supra* note 83.

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

144 Samantha Dawson "Nunavut reveals draft family violence strategy" *Nunatsiaq News* (20 March 2013) online: NunatsiaqOnline <<http://www.nunatsiaqonline.ca>>

document on the government's part.¹⁴⁵ In a similar vein, the positive results of the Rankin Inlet Spousal Abuse Program have been known since 2009. Yet neither the Canadian nor Nunavut governments have made any movements towards replicating the program in other communities. Finally, highlighting how prevalent the problem of domestic violence is in Nunavut, the Member of the Legislative Assembly ("MLA") for Pangnirtung was suspended from the legislature in 2011 when it was discovered he was facing spousal assault charges.¹⁴⁶ While he later resigned, it raises the question of the fitness of those who are supposed to develop solutions to the territory's problems.

Taking a feminist lens, the first step is to addressing the high rates of domestic violence is to elect more people willing to prioritize the issue to the Nunavut legislature. As of 2014, there are only three female members of the twenty-one-member body. From there, the government could work at expanding the program offered in Rankin Inlet to bring perpetrators in contact with counseling, and could improve the *Family Abuse Intervention Act* to retain the elements that allow a woman to manage how her case of domestic violence will be dealt with. While poverty and the government's administrative capacity would need to be addressed, these reforms could help stop the violence that currently exists.

Taking an anti-colonial lens, the path forward is more uncertain. Alfred is clear he believes indigenous governments that conform to settler-expectations will by design "undermine, divide and assimilate indigenous people [and that] those who achieve power run the risk of becoming instruments of those objectives."¹⁴⁷ If the MLAs are vulnerable to co-option, their slowness to address the problem is understandable: the state structure they belong to does not prioritize the needs of aboriginal women, and is unlikely to look favorably on solutions that divest the state of power over individuals. If part of the cause of domestic violence is the disempowering authority of the colonial state, then the Nunavut legislature is not the ideal body to rectify the problem.

The Nunavut government is a reality however, and steps will have to be taken even in the face of intransigent government. Alfred's emphasis on decolonization beginning at the individual level recommends that counseling programs not only be expanded across the territory, but that their curriculum promote pride in being indigenous and address the role of colonialism in bringing men in the program to their current situation. As previously mentioned, the Canadian government provides funding for the Rankin Inlet Spousal Abuse Program, and this may limit innovation in the curriculum, and the Nunavut government seems unwilling to really address the issue. Alfred's answer would be to find a way to administer the program without reliance on colonial funds. One potential source of funding (and direction) is Nunavut Tunngavik Incorporated ("NTI"), the Inuit-run organization that exists separate from the Nunavut government, and allocates the settlement money from the Nunavut Land Claims Agreement.¹⁴⁸

Another step that could be taken is to continue the process of replacing settler justice institutions with a restorative justice system that comes from, and is administered by the communities. A justice system that encourages respect for, and reinvigoration of

145 Nunatsiaq News "QIA dumps on GN's draft violence prevention plan", *Nunatsiaq News* (22 March 2013) online: NunatsiaqOnline <<http://www.nunatsiaonline.ca>>

146 George, "Nunavut women", *supra* note 83.

147 Alfred, *supra* note 10 at 54.

148 NTI's relationship with the government is a complex one. It does not act as a parallel government, but it does exercise considerable influence over the Nunavut government, to the extent that the two bodies have a formal protocol dictating their rights and responsibilities. Whether Nunavut Tunngavik Incorporated perpetuates colonialism or is a decolonizing force goes beyond the scope of this paper, but it is a question well deserving of study. See Graham White, "Governance in Nunavut: Capacity vs. Culture" (Spring 2009) 43:2 *Journal of Canadian Studies* 60).

aboriginal traditions would represent true restorative justice, not only for victims and perpetrators, but through the decolonizing process of building them, for the community as a whole.

The bedrock for the project already exists. Community Justice Committees are at work in some communities, with counsels of elders taking diversions from the RCMP for some youth with misdemeanor charges. The committees involve the accused, the victim, and the community, and find solutions using Inuit principles like inclusiveness and co-operative decision-making.¹⁴⁹ Nunavut's former Chief Justice Beverley Browne has stated that courts are not adept at dealing with domestic violence, and that Community Justice Committees might be better suited.¹⁵⁰ To get to that point, the committees will have to increase their administrative capacity, prepare themselves to interact with more serious matters, and make the case for their legitimacy in the community. In other words, individuals will have to be found who believe in appropriateness of community directed justice and are deeply committed to the decolonization process. These will all be difficult tasks, but they can be attempted even in the face of apathy from the Nunavut government. On top of these challenges, the RCMP will have to be convinced to change its diversion policies to allow a wider range of matters to go before the Community Justice Committees. An end goal for the territory may be relieving the RCMP of its discretion over what matters go to Canadian courts and what matters go to the Community Justice Committees altogether. These are monumental tasks and goals, but the process of rebuilding Inuit justice intuitions and convincing colonial governments to recognize their legitimacy may well be as beneficial to the community as the institutions themselves.

149 Department of Justice, *Review of Nunavut Community Justice Program: Final Report* (2004) at 12, online: Department of Justice <http://www.justice.gc.ca/eng/rp-pr/aj-ja/rr05_7/rr05_7.pdf>.

150 *Ibid* at 34.