# Women and Risk

## Aboriginal Women, Colonialism,

**BY PATRICIA MONTURE-ANGUS**

*Dans cet article il est question des effets conntinus de la politique de colonisation et des pratiques subies par les femmes autochtones partiulièrement quand elles sont en butte avec le système de la justice criminelle. L'auteure dénonce le fait que même après plusieurs initiatives gouvernementales, les attitudes actuelles au correctionnel demeurent tristement ignorantes de sproblèmes tonchant les des femmes autochtones.*

I often feel that the stories I have to tell begin outside of the words and ideas that have been placed on pages. There is nowhere that this is more true than when the issue is the contact and experience that Aboriginal people, and especially Aboriginal women, have with the Canadian criminal justice system. Given the thousands of pages of government reports which examine the issue of Aboriginal overrepresentation in the Canadian criminal justice system, this may come as a great surprise to many people. However, the truth remains that much of what I have read about Aboriginal people and Canadian criminal justice is not what I have experienced and been taught were the central issues.

The most recent report on Aboriginal people and the Canadian justice system, is the *Report of the Royal Commission on Aboriginal Peoples*. The justice materials were compiled in a separate report, titled *Bridging the Cultural Divide*,[1] released in 1996 just prior to the Commissioner's six-volume final report. This most recent report is an excellent example of the gap that still exists between Aboriginal understandings of our justice struggles and the words that have been written on the page. It is also essential to note that this report will not be helpful in examining the questions which come to the fore regarding Aboriginal women and the administration of their prison sentences including the issues of risk assessment, risk management, and security classification.[2] The *Report*, in fact, is silent on how to remedy the negative experiences of Aboriginal women in prison (see Monture-Angus 1999). This is troubling.

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It is important to note the nature and scope of the discussion in the Royal Commission on Aboriginal Peoples (RCAP) report. Their first justice recommendation states:

> Federal, provincial and territorial governments recognize the right of Aboriginal nations to establish and administer their own systems of justice pursuant to their inherent right of self-government, including the power to make laws, within the Aboriginal nation's territory. (RCAP 1996a, 312)

Although I do not disagree in principle with this statement, it is not very realistic in practical terms. As a result of the colonial legacy of Canada, Aboriginal nations are not represented as nations in the way our political organizations have been structured. Rather, these Aboriginal nations are organized around the classifications which arise out of the *Indian Act* regime either because of registration as an "Indian" or the lack of such a legal recognition. This must be seen as a demonstration of the degree to which colonial policy and practice has fragmented and re-structured Aboriginal governing structures. For example, the Assembly of First Nations is an organization which represents *Indian Act* Chiefs while the Congress of Aboriginal People represents those who are not entitled to be registered or maintain off-reserve residency which disentitles them to many of the benefits of the *Indian Act*. If the power to have justice relationships is not maintained at the community level but at the nation level, as the Royal Commission on Aboriginal Peoples endorses, then the power for Aboriginal persons to exercise their jurisdiction in justice matters is seriously compromised if not fully limited. Although this first recommendation is an eloquent statement of principle, it means very little in practical terms as our nations no longer remain significantly organized in this political way. Therefore, celebrating the wisdom of the Royal Commission which saw fit to acknowledge the self-governing power of Aboriginal nations must be cautiously undertaken. The impact of colonialism was discounted by the Commission, if not fully ignored, and as a result no real opportunity exists to transform the recommendations from mere words into reality.

It is equally important to note that the justice recommendations of the Royal Commission did not significantly focus on the circumstances and experiences of Aboriginal people in prison. The rate at which Aboriginal

women are overrepresented in Canadian institutions of incarceration is higher than the rate of overrepresentation for Aboriginal men if national figures are used as the base.[3] So if the silence of the Royal Commission on prison circumstances is noted, the double silence regarding the situation of Aboriginal women in prison is of greater consequence as their experiences are often based on the denial of their race/culture and concurrently their gender.[4] Granted, I do believe that it is essential that we look to the future when reclaiming Aboriginal justice practices. I do not agree that this task can be allowed to force us to sacrifice the current generation housed in federal, provincial, and youth institutions of confinement for the mere hope that future generations will not have to face the imposition of Canadian criminal justice law and practices. Hope after all guarantees nothing.

Turning to the six-volume final *Report of the Royal Commission on Aboriginal Peoples* to understand more about the manner in which the Commissioners included Aboriginal women in their work, identifies further problem areas. The Commission believes that we, as women, hold "perspectives"[5] and neatly identifies two issues which are of (by implication) special concern *only* to Aboriginal women.[6] This is an insufficient way to characterize the position of Aboriginal women in our nations. These two issues are violence and loss of status under former section 12(1)(b).[7] Although I do believe that these are important issues, they do not reflect the full diversity of concerns that Aboriginal women possess. They do not reflect my "perspective" on being an Aboriginal (more accurately, Mohawk) woman. Some deconstruction of these ideas and the way they limit my race/culture-based knowledge of gender is necessary.

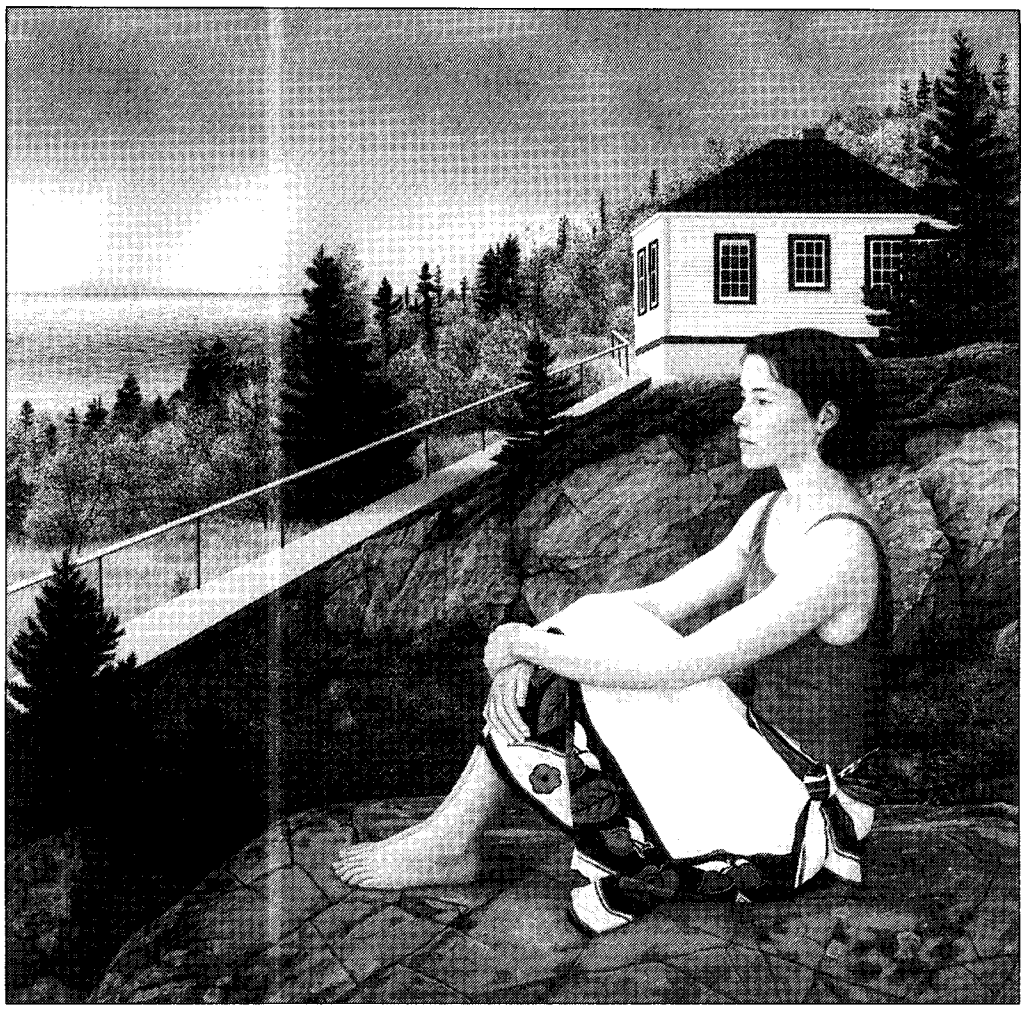
First, section 12(1)(b) is just one small example of the way our government has been interfered with by the imposition of Canadian ways of and ideas about governing. This includes the way that women's roles were diminished in the government forms that were brought to the Aboriginal territories now known as Canada. This is not a correct construction of the gender-balanced roles in Aboriginal societies. Second, to suggest that the place of Aboriginal women is a "perspective" is to do serious harm to the governing structure of Aboriginal nations that would be described as matrilineal. Gender in these governments is a fundamental part of the way that government responsibilities are distributed.[8]

Both the fact that Aboriginal governments have been interfered with and the specific manner that this interference was gender-based is important to understanding the justice obstacles Aboriginal people now face. Logically then, it can be easily surmised that as women were and *are* central to the structure of Aboriginal governments, women also played a significant role and possessed authority in matters of (criminal) justice. I have heard from Aboriginal people all over the continent: "Grandmother made the rules and Grandfather enforced them." If this is the case, then Aboriginal women had (and still have) a fundamental responsibility with and to justice relations in our communities. The imposition of foreign forms and relations of governance must be seen to have significantly interfered with Aboriginal justice traditions. This does not mean that traditions have been destroyed or that they no longer exist. It simply means that colonialism has had, and continues to have, a negative impact on the ability of Aboriginal people to maintain peaceful and orderly communities.

Since the Task Force on Federally Sentenced Women in 1990, the direction that First Nation[9] communities have taken with justice matters is also of importance to this discussion. The Task Force recommended the building of a Healing Lodge for Aboriginal women. This recommendation was realized with the opening of Okimaw Ochi Healing Lodge at the Nekaneet First Nation in 1995. Since then at least two more lodges[10] have been opened in the prairie provinces with negotiations occurring in other areas of the country as well.[11] Little research[12] has been completed on the introduction of these new institutions and they are institutions no matter how much Aboriginal culture and tradition inspires their contour, shape, and form. This direction demonstrates the degree to which Aboriginal communities have been willing to embrace conventional correctional practice.

**Colonialism has a negative impact on the ability of Aboriginal people to maintain peaceful and orderly communities.**

The government of the Nekaneet First Nation understood that the Healing Lodge was a part of the legal and bureaucratic structure of the Canadian prison system. In their ne-



*Valerie Palmer, "Lighthouse," oil on linen, 47.5" x 47.5", 1997.*
*Courtesy of Nancy Poole's Studio, Toronto, Ontario. Photo: Tom Moore*

gotiations, the community addressed this concern by recognizing that the building of the Lodge was only a first step and *not* a final step. Their vision was that as time passed the Lodge would move more and more toward community control and administration. This was also the vision of the Aboriginal women who participated in the Task Force. Anecdotal evidence clearly suggests that this is not what has happened. Rather, as time passes, the philosophical foundation of the Lodge has shifted toward the Canadian correctional mentality. Chief Larry Oakes of the Nekaneet First Nation had at least one meeting with the Commission of Corrections in the fall of 1998 to discuss the community vision and further community involvement. There are no negotiations underway based on this community vision (Oakes) and, in my view, this is unacceptable.

As a result of the willingness of some prairie (primarily Saskatchewan and Alberta) First Nations to embrace at least as a starting point, conventional correctional practice, determining risk predictors is especially important to have from a First Nations stand point. A "stand point" is different from a "perspective." The women's facility is designated as a medium-security facility. The federal male institution at Hobemma is a minimum-security facility. This is despite the fact that it has been known for some time that Aboriginal men and women are overrepresented within the maximum-security classification. This is very frustrating.

As a member of the Task Force on Federally Sentenced Women, I believe that my contributions and values have been profoundly disrespected by the Correctional Service of Canada.[13] These "Aboriginal" institutions are based on the borrowed notion of security classification. Therefore, work on developing better risk scales undertaken by Corrections Canada has a direct, but generally invisible, impact on the institutions that were envisioned by First Nations. Unfortunately, this impact has not been expressed in any of the literature that I have seen on the development of risk predictors or on the new Aboriginal institutions. The isolation in which Aboriginal initiatives are developed in this federal bureaucracy has a profoundly negative impact on the amount of Aboriginal visioning that is possible. As many First Nations communities do not have access to the professionalization of justice relationships, I worry that these consequences are not necessarily always visible. Our dreams are limited by correctional expectations that we will accept certain ideas such as risk management and risk prediction scales. This must be seen for what it is. It is a clear form of systemic discrimination.

An idea such as risk management is one that is contrary to how I was raised as an Aboriginal person to think about relationships. As I have noted in other writings, relationships are the central construct in "Indian" law as I understand it (see "Roles and Responsibilities" in Monture-Angus 1996a). People (or any "thing" with spirit) were not intended to be managed but rather respected. The conclusion is that one of the foundational ideas of current correctional philosophy is, in my opinion, incompatible with Aboriginal cultures, law, and tradition. This incompatibility is a greater obstacle than simple theories of

cultural conflict. This opinion is a substantive criticism that is much larger than questioning the cultural relevance of programming within correctional institutions which has been a significant preoccupation in the many justice reports that address Aboriginal experiences and concerns.

This discussion has now brought me to the place where I can make some comments about the idea popular among prison administrators regarding their ability to determine risk. These risk scales are all individualized instruments. Applying these instruments to Aboriginal people (male or female) is a significant and central problem. The individualizing of risk absolutely fails to take into account the impact of colonial oppression on the lives of Aboriginal men and women. Equally, colonial oppression has not only had a devastating impact on individuals but concurrently on our communities and nations (see Monture-Angus 1996b). This impact cannot be artificially pulled apart as the impact on the individual and the impact on the community are interconnected.

For example, in the *Report of the Aboriginal Justice Inquiry of Manitoba*, it is noted that Aboriginal "women move to urban centres to escape family or community problems. Men on the other hand, cite employment as the reason for moving" (485). Once in the city, many Aboriginal women face issues that they had not expected from systemic and overt to subtle forms of racism as well as lack of opportunities. The Manitoba Justice Inquiry notes that "what they were forced to run to is often as bad as what they had to run from" (485). And often, what they experience in the city (from shoplifting to prostitution, drug abuse to violence) as a result of poverty and racism, leads them into contact with the criminal justice system. Yet, a criminal court is not interested in hearing about this long trail of individualized and systemic colonialism which leads to conflict with the law. Courts are only interested in whether you committed a wrong act with a guilty mind. This is a clear example of how the individualized nature of law obscures systemic and structural factors. This is a problem that exists within the court process but also in other justice decision-making practices and bodies such as security classification, risk assessment, penitentiary placement, parole, and so on.

Examination of the risk prediction scales identifies many common considerations taken into account to predict risk. For example,

> [t]he Case Needs Identification and Analysis protocol identifies seven need dimensions, including *employment, marital/family, associates, substance abuse, community functioning, personal/emotional and attitudes.* (Motiuk 19; emphasis added)

Several of these dimensions are particularly problematic for Aboriginal "offenders." Aboriginal people do not belong to communities that are functional and healthy (and colonialism is significantly responsible for this fact). Therefore, constructing a "community functioning" category ensures that Aboriginal people will not have access to scoring well in this category. This is not a factor for which individuals can be held solely accountable. Rather than measuring risk this dimension merely affirms that Aboriginal persons have been negatively impacted by colonialism. The same kind of assessment can be put forward for the dimensions of "marital/family" and "associates" as the incidence of individuals with criminal records is greater in Aboriginal communities. It has been frequently noted that the issue of substance abuse in Aboriginal communities is a symptom[14] of a much larger problem. Therefore, this simple analysis demonstrates that scoring higher on these categories is predetermined for Aboriginal prisoners because of the very structure of the instruments. What is being measured is not "risk" but one's experiences as part of an oppressed group.

The work that assesses the validity of these risk prediction scales is also a problem because it does not do race (Aboriginal) and gender (female) as categories that are inclusive (see Motiuk; Blanchette; Bonta; and Collin). The studies tend to examine the validity of these scales for Aboriginal people but not for Aboriginal women. Despite this fact, prison administrators and senior bureaucrats remain committed to applying these "tests" and concepts to the structure of individual Aboriginal women's prison sentences as well as to the manner in which the prisons in which Aboriginal women serve their sentence are structured. In my opinion, this is a violation of the *Canadian Charter of Rights and Freedoms*' section 15 equality provisions. It also strains the common sense interpretation of section 28 of the *Corrections and Conditional Release Act* which provides that persons confined in a penitentiary shall be confined in the least restrictive environment. If risk prediction scales are not valid for Aboriginal women (and I have not seen convincing documentation that they are), then security decisions based on these scales cannot be reasonably applied to Aboriginal women.

Enough has been said and written about the devastating effects of the Canadian criminal justice system on both Aboriginal citizens and our nations. Despite this fact, little has been accomplished to do more than accommodate Aboriginal persons within the mainstream system. There has been no systemic change of Canadian justice institutions. As we approach the tenth anniversary of the report of the Task Force on Federally Sentenced Women, perhaps it is time to revisit the work of the last decade and see how true it has remained to the original vision of the women who were asked to participate in this project. This project should take place within some formal structure. I am quite confident that I am not the only former Task Force participant who is bitterly disappointed.

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[1]It is my understanding that the justice materials were released early as a way of noting the seriousness with which the Commissioners saw this topic.

[2]Pages 139–147 of *Bridging the Cultural Divide* discusses the experiences of Aboriginal women in prison. This discussion does not move beyond the descriptive and no recommendations made. The Commissioners did attend a special hearing at the Kingston Prison for Women, and the women shared their stories (often very painful stories) with them. The end result is that the Commission "borrowed" the pain of Aboriginal women prisoners and gave nothing beyond a few pages of descriptive discussion back to the women. This fails to meet the standards of responsibility that I was raised with as a Mohawk woman. If you take from a person, you are obligated to give back at least what you took. The irony that this is what occurred in a Commission that was meant to be Aboriginal-specific and Aboriginal-focused has not escaped me.

[3]The national figures do disguise some of the circumstances that Aboriginal men who are incarcerated experience. Although the national rate of overrepresentation is a figure lower than 20 per cent (depending who counts and how the counting is being done) for Aboriginal men, this figure hides the fact that Aboriginal men make up approximately 80 per cent of the population at Saskatchewan Penitentiary.

[4]My point is not numerical and I realize that there are far fewer women incarcerated in Canadian prisons than men.

[5]The section on Aboriginal women is titled, "Women's Perspectives" and appears as Chapter 2 of the volume titled, "Perspectives and Realities." The chapter devoted to women begins on page 7 and the discussion ends on page 96 (totaling 90 pages). Not including introductions and conclusion, the discussion appears under the headings: "Historical Position and Role of Aboriginal Women: A Brief Overview" (3.5 pages); "Reversing a Pattern of Exclusion—Women's Priorities for Change" (less than a page); "Aboriginal Women and Indian Policy: Evolution and Impact" (31 pages); "Health and Social Services: A Priority on Healing" (9.5 pages); "The Need for Places of Refuge" (6.5 pages); "The Rise of Aboriginal Women's Organizations" (3 pages); "the Need for Fairness and Accountability" (12 pages); and, "The Family" (12 pages). The longest discussion deals with issues of status and membership under the *Indian Act*. The relationship between violence in communities and the overrepresentation of Aboriginal women in corrections institutions is not made.

[6]The way the Commission has constructed gender is highly problematic. Violence against women is not a women's problem. It is a community problem. Further, the section on "family" appears in the women's section. Are men no longer part of our families with particular gender-based responsibilities?

[7]This section of the *Indian Act* stripped Indian women of their status if they "married out." The same prohibition was not extended to women who "married in." I am not familiar with any research which examines if there is a relationship between being stripped of your status and contact with the criminal justice system. The idea that such research might yield interesting results occurs because many Indian women who go to the city do not have and have not had access to educational opportunities or employment. This is another example of the gaps that exist in the written record.

[8]See, for example, Aboriginal Justice Inquiry of Manitoba, 475–477.

[9]The change of language from Aboriginal to First Nations is intentional. It indicates that my comments focus on the experiences of "Indians" to the exclusion of Metis and Inuit peoples.

[10]The Prince Albert Grand Council operates a facility on the Wahpeton (Dakota) First Nation near the city of Prince Albert, Saskatchewan. This facility holds only male offenders primarily serving provincial sentences with five federal beds. The Pe'Sakastew Centre is located on the Hobemma (Cree) First Nation in Alberta. It is a federal minimum security facility.

[11]This is one of the ways that First Nations have chosen to participate in reclaiming traditional justice practices.

[12]The most significant research was completed by Connie Braun (Cree) in her M.A. thesis (1998). In this work she documents the experiences of Aboriginal men at the Hobemma facility against their experiences of conventional prisons.

[13]Please see Chapter 2 of the Task Force Report, *Creating Choices*, for a discussion of the hesitations the Aboriginal women had with regard to participating in the Task Force. I do understand that the degree to which I feel violated in this process arises out of my Aboriginal values and teachings about respect.

[14]Further research, research that is conducted with the primary involvement (meaning control) of Aboriginal persons (including women) is needed in this area.

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## DONNA LANGEVIN

### Accordion

In a music of
new distances,
like the pleated accordion
we heard at his last recital,
my son and I pull apart,
expand, contract back
to one another.

Although sixteen,
when no one's watching
he begs me for boyhood games—
*Count my bones and see*
*if I've grown any new ones.*
I count his vertebrae
but never get the number right
so have to try again
until he's satisfied.
*Now pretend my veins are rivers.*
I make up a story
where the ones in his arm
are the Don, Humber and Credit.
My fingers become a duck, salmon and turtle
that swim down each of them
to Lake Ontario. Salmon
gets there first, then Duck.
Turtle stops to bask in the sun,
nibble the grass
until my son hears the doorbell ring,
leaps up to let in
his friends who hide
Penthouse under the mattress,
say fuck after every word,
and descend on my fridge like locusts.

I am at an ackward age.
His brothers grown and married,
I'm fed up with his homework,
bad reports, walking the dog,
endless bills,
terror he'll get into
cigarettes, drugs, alcohol
as I listen sleepless
for his footsteps.
I need to be free
of loving him so much
I hope he never leaves,
not even to live the dreams
I make up for myself
when he asks me to tell his fortune.
*You'll be a famous musician playing concertos*
*in your mountain top home.*
*I'll listen with your children, a boy and girl*
*who will take after you.*

*Donna Langevin is an award-winning poet and the mother of three sons. She lives in Toronto.*