Witnessing the Colonialscape: lighting the intimate fires of Indigenous legal pluralism

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Abstract

Law has been used to impose and enforce colonial power relations in Canada, as well as being used as a tool of resistance within Indigenous-state relations. The day-to-day lives of Indigenous people remain shaped by the foundational geo-legal construction of Indians and Indian reserves through which the violence of settlement has been neutralized. Yet Indigenous law and Indigenous geographies continue to produce their own socio-legal identities and territories of meaning, which exist alongside colonial ideas about Indians and Indian space. Working from the understanding that Canada is a legally pluralistic state, it follows that the legal consciousness of Indigenous people are formed within relationships to multiple legal orders, and the individual identities of Indigenous people are produced through these heterogeneous relationships.

In this dissertation, a grounded analysis of legal pluralism emerges as I investigate dynamics of law, violence and space through the frequently unheard perspectives of Indigenous people working to address violence in communities across BC. Although widespread efforts have been undertaken to seek justice for offences against native people, violence continues to be a daily reality for Indigenous people across BC and Canada. Thus, I first examine several cases of violence which have emerged into public discourse in recent years, asking what has been accomplished in these efforts to gain social and legal recognition of violence. Second, efforts to address violence within Indigenous communities are explored, suggesting that these initiatives at community, family and interpersonal scales might be understood as expressions of Indigenous law. These diverse initiatives are changing norms around violence at a community level among networks of people who share a reciprocal sense of responsibility to one another, rooted in Indigenous territorialities. These efforts to address violence form a countermeasure to the violence of Canadian law, providing possibilities for engagement of individual and collective agency, power, and self-determination. I conclude by discussing how the recognition of Indigenous jurisdiction opens up the possibility for Indigenous people to escape justice wormholes, recategorizing themselves and the violence against them within Indigenous geographies of law rooted in intimacy rather than violence.
Keywords: violence; legal geography; Indigenous law; legal pluralism; Indian reserves; colonialism
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Although writing this dissertation has at times felt like a very solitary activity as I have sat in my pyjamas for days on end working on my computer, I am acutely aware that without the network of friends, colleagues and family who cheered me on and provided significant contributions to my learning, I would not have completed this journey. As such, I have many people to acknowledge here.

This dissertation is rooted in the stories and experiences very generously shared with me by 11 people who agreed to be interviewed, many of whom I have worked with and come to know as friends over the years. Thanks to each of you for the conversations, shared inspiration, outrage, sadness and belief that change is possible. It is with much respect that I include your words and stories in the pages that follow.

I have been blessed with a supervisory committee of brilliant, challenging and downright nice people. Thank you to Nick Blomley for your willingness to take me on as a graduate student despite my lack of familiarity with the field of geography, for introducing me to the wonders of ‘the nomosphere’, and for posing challenging questions which will undoubtedly continue to strengthen my analysis of space, place and law. The insights offered by committee members Gerry Pratt and John Borrows have also been deeply appreciated – thanks to you both for your significant contributions to my personal and professional growth during my time as a doctoral student.

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The ideas that shaped this dissertation emerged from my work in communities across Turtle Island over the past 15 years. I am indebted to the countless conversations, cups of coffee, dinners, long road trips and community events I have shared with colleagues across the years, including Jody Stewart, Kathy Powelson, Caroline White, Jessica Danforth, Audrey Huntley, and Chanelle Gallant. I would like to especially acknowledge my dear friend Natalie Clark for first mentoring me, then collaborating with me and now sharing this PhD journey with me as we edge toward 15 years of friendship.

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List of Acronyms

DTES    Downtown Eastside
NWAC    Native Women’s Association of Canada
MCFD    Ministry of Children and Family Development
PGNFC   Prince George Native Friendship Centre
TCPS 2  Tri-Council Policy Statement 2, of the Interagency Advisory Panel on Research Ethics
### Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Dzunukwa</td>
<td>Wild woman of the woods</td>
</tr>
<tr>
<td>Potlatch</td>
<td>A system of law and governance of the Kwakwaka'wakw and other coastal Indigenous nations, known also as the feast system. Integral to potlatches is the displaying of rights and crests which honor longstanding relationships to the sea, sky, mortal and supernatural worlds through song, dance and ceremony. The potlatch was made illegal under the Canadian Indian Act from 1884 to 1951.</td>
</tr>
<tr>
<td>Sisiult</td>
<td>Double-headed sea serpent</td>
</tr>
<tr>
<td>Two-Spirit</td>
<td>Two-Spirit is used by some Indigenous people to describe the diverse roles and identities of lesbian, gay, bisexual, queer, trans and/or gender-fluid Indigenous people in North America. At the 1990 Winnipeg gathering of the International Gathering of American Indian and First Nations Gays and Lesbians, ‘Two-Spirit’ was chosen as a term to move away from the anthropological term ‘berdache’ in describing Native queer identities and communities. Following this usage, and that of some recent Two-Spirit scholarship, I choose to capitalize this term.</td>
</tr>
<tr>
<td>Nomoscape</td>
<td>The spatio-legal expression and the socio-material realization of ideologies, values, pervasive power orders and social projects. Nomoscapes are extensive ensembles of legal spaces within and through which lives are lived.</td>
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Chapter 1. Through the Eyes of *Dzunukwa*: stories of law and violence

Who we are is written on our bodies, our hearts, our souls. That is what it means to be Native in the dawn of the twenty-first century. Witness to what has been and what is to be. Knowing what has transpired and dreaming what will come. Listening to the stories brought to us by other beings. Renewing ourselves in the midst of chaos. (Brant 1994, 74)

This is a study of law and violence in colonial Canada. As such, there are a thousand sensational stories I could write here, countless acts of pain and suffering I could describe as a pathway into this discussion of the violence of Indigenous people’s lives. I could write about a serial killer, or police negligence, or the many personal accounts of sexual assault that have been shared with me. I could write about a murder, or a child’s experience of residential school, or any number of other cases that reveal the bloody realities of violence experienced by Indigenous people in communities across what is now known as British Columbia (BC). These stories would nicely anchor the analysis that follows in the embodied situations of life and death that drive this investigation. But let me begin instead with another kind of story—the story of a gift.

In 1999, I graduated from the University of Victoria with a Bachelor of Arts in women’s studies. The chair of the department, Dr. Christine St. Peter, gave me a print that had been hanging on the wall of her office when I first met her in 1994. The print

---

1 In recent years, critical Indigenous scholars in Canada and abroad have begun using the term “Indigenous” rather than “Aboriginal” when referring to the broad grouping of First Nations (government-designated status Indians), non-status, Métis, and Inuit peoples of Canada, as well as for first peoples internationally. As a Kwakwaka’wakw scholar, I align my work with that of other Indigenous people who wish to link the local experiences of first peoples in Canada with others around the world, asserting the shared primacy of our relationship to the lands of our ancestors as well as the international quality of our political movements. Thus, I primarily use the term “Indigenous” in this dissertation. I also use “Indians” to refer to the colonial categorization of Indigenous people as subjects of Canadian law. Indigenous words for specific nations are also used where possible.
was of *dzunukwa*, the wild woman of the woods, and the artist was my auntie Noreen. When I first saw this print as a 17-year-old student in my first year at university, I was taken aback because I didn’t know my auntie had ever been an artist. I also did not expect to see *dzunukwa* there on the wall of a professor’s office. In my undergraduate studies, I wrote an honors thesis focused on violence against Indigenous women in the sex trade, particularly efforts to address violence in the Downtown Eastside of Vancouver. I was troubled by the lack of research that had been done on this issue, and sought to break down the stereotypes about Indigenous women’s sexuality that served to stigmatize and degrade sex workers. Additionally, I felt compelled to address violence when my cousin Malidi took her own life and, as a result, some members of our family began talking about intergenerational abuse in our community. Thus began my efforts to understand my relationship to violence as an Indigenous woman. Upon presenting the print to me after my graduation, Christine told me that she saw my work on violence as akin to the work of my auntie in her portrayal of *dzunukwa*.

Kwagiulth children are warned about *dzunukwa*, who lurks at the edge of the forest looking for human children on the beach to scoop into her basket to eat. Children are told to carry a clam shell in their pocket so they can cut their way out of the basket and escape, or better yet, to stay off the beach at night and avoid *dzunukwa* altogether. In the print, however, the wild woman is peacefully kneeling with her hands upturned and a small version of herself is perched on her hands looking at her. Carrying two additional children of her own in her basket, the story becomes one of a mother who has young ones to feed. She may hunt down human children for food, but it is because of the hungry mouths that await her at home. In this portrayal of *dzunukwa*, my auntie revealed the wild woman’s own perspective, remaking the meanings of violence and victimization that usually set up *dzunukwa* as apart from the community as an inherently violent or threatening subject.

Christine told me that she saw my work on violence against Indigenous women in a similar light, as I was seeking to undo the stigma surrounding sex work in order to unhinge the relationships between violence, colonialism, sexuality and Indigenous women as they are normatively understood. Christine centered the power of my own actions as an Indigenous woman, and the possibilities that might emerge from my work on violence. Receiving this gift helped me to see my academic work in a new way, as a
site of translation and representation, working between colonial and Indigenous systems of thought to create new categories of meaning with which to make sense of the senseless.

For the enormity of violence is not something that we should be able to make sense of. Hundreds of women have been killed or disappeared. Daily acts of violence go unnamed, unheard and unseen. Intergenerational abuse within Indigenous families and communities is widespread, as is the abuse of children in government care. No, there is no sense in any of this. Yet ‘making sense’ of this violence, wanting to fit it in to normative categories of law in order to trigger a legal response, is part of the work necessary in creating change. ‘Making sense’ requires knowing the language of dominant institutions, ideologies, and socio-legal discourse, as well as the daily realities we are trying to make sense of. Yet, as I will explore here, it also requires translating across systems of knowledge between dominant and Indigenous community contexts.

Too often, Indigenous people are only seen as certain kinds of legal subjects, appealing for help as victims, or appealing for leniency as offenders. The categorization of Indigenous people as criminalized or inherently victimized can be seen in the gaps in literature on Indigenous people and their engagement with the justice system. When I worked for the Victim Services and Community Safety Division (VSCPD) of the Ministry of Public Safety and Attorney General (MPSSG), I conducted research on models for supporting victims of violence in remote and rural communities and found a lack of resources focused on the needs of victims. Attending a justice conference on behalf of VSCPD approximately eight years ago, I joined First Nations leaders and representatives of the justice system, who were meeting to discuss agreements between the three levels of government (Provincial, Federal and First Nations). I was the only person at the entire conference speaking about the needs of victims. Everyone else was focused on policing and support for individuals who had committed a crime.

These narrow representations of Indigenous people serve to limit the grounds in which our agency can be acknowledged, as practices of representation create meaning and identities and thereby create the very possibility for agency (Doty 1996). Any discussion of agency must therefore also be a discussion of representation. This research examines dominant representations of Indigenous people as subjects of
normalized violence, and counters this representation with the perspectives of Indigenous legal technicians whose very identities emerge out of conditions in which our agency is made possible. Further, Feldman (1992) explores the concept of political agency and the body in a powerful investigation of political violence in Northern Ireland. Drawing on Nietzsche, Feldman views power as embedded in the situated practices of individual agents or actors, and the legitimation of this power is performative and therefore contingent rather than absolute. Through the stories and oral histories of individuals, as well as the exploration of bodily practices of violence, Feldman seeks to “fracture the appearance of lawful continuity between centers of legitimation and local acts of domination” (2). Drawing on Feldman’s view of power and agency, this research locates individual Indigenous people themselves as legal and political agents whose views on violence and law have the potential to expose gaps in normative colonial logics. These perspectives are usually not visible within discourses of law which emerge from centers of power, but nonetheless actively inform Indigenous peoples’ legal consciousness and sense of law and justice, alongside those of Canadian law and society.

For Indigenous people are not only legal subjects, but are also legal actors, in both formal relationship to systems of law and governance, and working in informal capacities across a diversity of sites, yet this work goes largely unseen. In the sections that follow, I develop an analysis of law and violence based on the perspectives of Indigenous people such as myself who work in relation to both Canadian law and Indigenous communities as we seek to change realities of violence. This informal network of Indigenous legal technicians is made up of people working in diverse roles, across community and institutional contexts, using a variety of strategies and understandings of law in our work as lawyers, counsellors, community-based researchers, educators, activists, youth workers and more. Many of us take up multiple roles beyond our paid work as we address violence in our capacity as sisters, brothers, aunties, parents, and informal supports for our neighbors. Individuals in this network are situated at varying distances from centers of law and power in both Canadian and Indigenous contexts, moving between and among these socio-cultural spaces. This network can be understood in a number of ways: as translators across diverse systems of legal meaning, as technicians of pluralistic systems of law, and as witnesses to
colonial violence and its normalization. But at the heart of these diverse understandings of the work of Indigenous people addressing violence in BC, our actions, analysis and creative work are rooted in assertions of agency. We are each working in our own ways to create change in the material realities of violence experienced by Indigenous people across BC, as well as the ideological and systemic forces that ‘make sense’ of these material realities. Although we use different strategies across diverse contexts, we work with the shared vision of de-normalizing, and thus stopping, interpersonal and systemic violence against Indigenous people, particularly children and women. This work goes largely unseen at the scale of formal systems of law and governance, as it operates largely at community and individual scales to change norms around violence, rather than appealing for changes or recognition within the *Criminal Code, Indian Act, or Canadian Constitution*. These technicians are not inhibited by the same jurisdictional boundaries as police, judges, or others working for the Canadian state, but work across the pluralistic jurisdictional boundaries of Canadian and Indigenous law. In doing so, they weave together diverse systems of knowledge, and ascribe multiple categorizations to acts, people, and places because of their role mediating pluralistic socio-legal systems of meaning.

In developing an analysis of law and violence from the perspective of this network of Indigenous technicians, this research exposes a diversity of actions being undertaken to address violence in communities across BC. While these efforts might be seen by some legal representatives as social actions being taken on a small scale outside the realm of law, I instead position these as enactments at the center of pluralistic, overlapping, and dynamic legal geographies as “legal principles and obligations of aboriginal law are reflected in the actual work, structures and life of present day aboriginal peoples and communities” (Napoleon and Overstall 2007, 1). This might be understood as the scale at which Indigenous law operates: through a network of relationships among people, the land, animals, and ancestors. Indeed, recognizing and theorizing these relationships aid in making Indigenous law more recognizable as law, demonstrating the ontological distinctions between the legal subjectivity of an ‘Indian’ and a Kwagiulth person. While violence against ‘Indians’ may have been normalized, violence against Kwagiulth people is qualitatively, indeed ontologically, different. Recognizing me as Kwagiulth means that my identity and legal subjectivity is
constituted within Indigenous epistemologies, rather than colonially-defined terms in which I am inherently an ‘Indian’ subject against whom violence is expected. Bringing the perspectives of Indigenous legal technicians into reconceptualizing geographies of violence and law, I see this research as “a performative ontological project” (Gibson-Graham 2008, 616), bringing new worlds into being through the articulation of new or nonhegemonic systems of thought in order to make them more real, more viable, more present in everyday life. Here, I am interested in recategorizing Indigenous people as active legal and political agents rather than as pure victims or subjects under a totalizing system of colonial rule. Like my aunt who created the print of the wild woman dzunukwa, I seek to center Indigenous cultural knowledge and community-specific truths in redefining our relationships with one another as we shift our understandings of law.

Over the past 15 years, I worked in various capacities to address violence, including as a consultant for provincial and federal government ministries. Conducting community-based research, I created models for service provision, researched best practices and provided education and emergency support around issues of sexual assault, commercial sexual exploitation of children and youth, intergenerational abuse, and many other types of violence. However, much like Australian socio-legal scholar C.F. Black (2011), “I began to realize that this law could not help Indigenous peoples; rather it was a hindrance to them” (7). Not only did I begin to see Canadian law as a hindrance, but I also began to see myself as part of the problem.

However, while some Indigenous legal scholars might advocate that we put Canadian law to one side (Christie 2007) in order to breathe life into Indigenous legal thought, those of us working on daily realities of violence know that this is not always an option. Although Canadian law offers limited solutions to violence, and those solutions entail their own forms of violence aptly described as a snare by Christie (2007), legal solutions are often practically useful when situations of violence occur. Until Indigenous communities have fully developed their own diverse approaches to lessening violence and dealing with interpersonal violence when it occurs, sidestepping Canadian law entirely is simply not practical. When your son is being arrested, your child apprehended into state ‘care’, or your loved one is murdered, simply ignoring Canadian law is not possible. Moreover, Indigenous peoples’ legal consciousness continues to be shaped in relation to the socio-legal categories which were foundational to colonial dispossession.
suggest here that the work being done in the dual frames of Canadian and Indigenous law can provide important insights into the potential to change realities of violence, and that these insights call for rethinking our definitions of law and violence in ongoing dynamics of colonialism in BC. Indigenous scholars who are concerned with theorizations of Indigenous law, ethics, methodology and community revitalization and self-determination ought to take seriously the price we pay in overlooking realities of violence in focusing exclusively on assertions of self-determination. The perspectives shared in this research have much to offer about the nature of Indigenous legal consciousness under legal pluralism, given the dual constraints of law’s violence and its occasional utility.

Chaw-win-is, one of the people I interviewed for this research, described her work as being oriented around the fire at the center of her community. As I listened to Chaw-win-is describe this fire, I came to understand it as the center of knowledge, law, culture and power, and each Indigenous community in BC has such a fire at its core. Rather than being oriented purely toward the singular federal fire of Canadian law, or its jurisdictional layering with provincial fires, this work is instead made up of a series of smaller fires that form a network across the lands of BC. This representation of the legal geography of Indigenous peoples in BC will begin to take shape through the course of this research, as being of a qualitatively different nature than the federal fire of Canadian law, and Indigenous people’s tethering to federal forces through the Indian Act. As I will outline, I understand the spatialization of the federal fire as the materialization of Canada’s colonialscape – a way of seeing that naturalizes the relations of domination and dehumanization inherent in colonial relations. Thus, rather than looking only at how Canadian law positions Indigenous people as colonial subjects, this research examines how Indigenous legal actors make sense of, and negotiate, pluralistic legal geographies and how this relates to our understandings of violence.

This research arises from my desire to represent our lives, as Indigenous people, anew. I want to speak of my relations in terms which allow for the possibility of our survival, not only our victimization. I want to speak of my identity not only as one constituted through the Indian status card that sits in my wallet, but through the generations of ancestors before me who danced our laws with honor. I want to write of the spaces we inhabit together as comprised through relationships not only of colonial
power but also of the ongoing, ever present possibility of Indigenous territorial relations which orient me toward the shoreline of Kwakwaka’wakw territories. I seek, then, not only to unmap or rehistoricize Indigenous peoples experiences of law and violence in colonial Canada, but to remap our daily material realities in terms which make it possible to express our pluralistic worldviews more fully.

1.1 My desire to do something different: foundational concepts

Under current institutional conditions in much of the world, even those projects that we might comfortably identify as counter-hegemonic are strategically compelled to go through ‘the state’ or state institutions in order to even compete effectively. That fact alone—a fact which implicates the centrality of statist legalism, legal positivism, ideologies of sovereignty, and the presumptive legitimacy of state (that is ‘authorized’) violence—necessarily imposes severe limitations on what kinds of worlds can even be imagined, much less brought into being. (Delaney 2010, 149)

A significant body of research, scholarship and narrative accounts has been written in recent years about Indigenous people and interpersonal violence, with a particular focus on the abuse of Indigenous children in residential schools (for example, Fontaine 2010, Milloy 1999, Miller 1996, Haig-Brown 1988) and high rates of violence experienced by Indigenous girls and women (for example McGillivray and Comaskey 1999, Amnesty International 2004, Pauktuutit 1996, Dumont-Smith, Sioui-Labelle and the Indian and Inuit Nurses of Canada 1991). Biographies and creative works have also been used to share the acts of resistance of Indigenous people, particularly women, to the discrimination and violence they face (for example Maracle 1996, Silman 1992, Fife 1998). Yet in my work as a consultant with the Ministry of Public Safety and Solicitor General (Hunt 2007), I found that while a wealth of information had been written about culturally appropriate ways of dealing with Indigenous people as offenders within the Canadian justice system, very little had been written about how to best support Indigenous people as victims of interpersonal violence. Rather, much of the material that has been written about violence against Indigenous people has attempted to simply
bring the extent of this violence to light, demonstrating that the violence is truly horrific and widespread enough to warrant a legal response. Indigenous scholars have argued that rather than violence being due to ‘risky lifestyles’, Indigenous women have often faced violence due to being “simply in the wrong place at the wrong time in a society that poses a risk to their safety. They were targeted because they were Aboriginal, and it was assumed that either they would not fight back or they would not be missed” (Jacobs and Williams 2008, 134).

Both scholarship and community advocacy focused on violence experienced by Indigenous people have generally tried to make this violence fit within categories of ‘violent crime’ that already matter or count within Canadian law and that are normatively treated as worthy of legal and social response. Authors have generally focused on appealing to the power of Canadian law for justice, using Canadian Criminal Code categorizations of violence to prove that Indigenous people experience violence at greater rates than ‘other Canadians’. Amnesty International (2004) has further argued that the factors contributing to heightened rates of violence against Indigenous women could be categorized as violations of international human rights conventions. These arguments seem based in the assumption that if the levels of violence against Indigenous people, particularly women and girls, are proven, Canadian legal actors such as police, lawyers and judges will be compelled to bring about an adequate legal response.

Research and statistical data have captured, at least in part, the extent to which Indigenous people experience an inordinate amount of violence\(^2\). In 2009, federal statistics indicated that close to 67,000 or 13 percent of all Aboriginal women aged 15 and older reported having been violently victimized (Brennan 2011). This included violence between strangers, acquaintances and within a spousal relationship. Further, national research found that the mortality rate due to violence was three times higher for

\(^2\) It is well known that due to a lack of trust in police and other authorities, many incidents of violence are not reported by Indigenous people. It is therefore safe to say that official statistical data do not capture the full extent of high rates of violence in Indigenous communities. For a discussion of research related to the reasons behind this underreporting see chapter 8 ‘Under-Reporting of Victimization’ in Chartrand and McKay (2006), *A Review of Research on Criminal Victimization and First Nations, Metis and Inuit Peoples 1990 to 2001*. Ottawa: Department of Justice. http://www.justice.gc.ca/eng/rp-pr/aj-ja/rr06_vic1/index.html
Indigenous women than non-Indigenous women, a rate that rose to five times higher for those aged 25 to 44 (Health Canada 2000). Aboriginal people of any gender are more likely to be victims of violent crime, including sexual assault, robbery and physical assault (Statistics Canada 2004). Research further indicates that violence is highest among youth aged 15 to 34, yet they are also eight times more likely to be in custody compared to non-Indigenous youth (Latimer and Foss 2004).

Scholars writing about self-determination or broadly about Indigenous politics, governance or law have largely shied away from addressing interpersonal violence. Yet a small number of scholars have begun to make the connection between violent processes of colonial containment and conquest, the dehumanization of Indigenous people in colonial rationales and the high rates of interpersonal violence in our communities. Sexual violence has been examined as a tool of colonial conquest in Canada and internationally, and some have argued that sexual violence serves as a powerful metaphor for the concept of colonialism itself (Smith, A. 1999). Colonialism is inherently also about the imposition of categories of race and gender through which violence against Indigenous people, especially girls and women, is naturalized: “Because sexual violence has served as a tool of colonialism and white supremacy, the struggle for sovereignty and the struggle against sexual violence cannot be separated” (Smith 2005,137). Some have identified the prevalent socio-economic conditions facing Indigenous communities as integral to the root causes of violence. For example, in a 1988 study of violence against women in rural BC, research participants suggested that violence was rooted in poverty, alcohol and drug abuse, geographic isolation, economic instability, sexism and patriarchal assumptions about the role of women (Jiwani 2001).

Yet few of these analyses engage Indigenous peoples’ perspectives, agency or self-determination, instead focusing on the power of the Canadian state and dominant discourses and practices of law and governance which normalize or dismiss this violence. My analysis attempts to both understand the normalization of violence within dominant socio-legal discourse and legal relations, and to recognize the potential of Indigenous practices and discourses of law to change norms around violence. Thus, the analysis in this dissertation builds on several assumptions which set this study of violence, law and colonialism apart from the current literature. I will outline four such assumptions here: legal pluralism, spatial analysis of these pluralistic legal relations, an
acknowledgement of the gaps and separations within Western law as contributing to violence, and a concern with how regimes of categorization shift within these pluralistic legal regimes.

### 1.1.1 Legal pluralism

First, this research arises within a framework of legal pluralism. Simply stated, legal pluralism is the recognition of more than one legal system in the same social field (Merry 1988, Griffiths 1986). The most familiar and straightforward example of legal pluralism for a North American reader is the system of federal, state or provincial and local or municipal law (Calavita 2010). The analysis of intersecting Indigenous and European law in colonial societies “embedded in relations of unequal power” (Merry 1988, 874) comprises what Merry calls ‘classic legal pluralism’. Yet investigations into legal pluralism have more recently been extended to noncolonial societies, as well as to the existence of multiple legal orders within colonial societies aside from just Indigenous and state law. The ontological question of what counts as ‘law’ or ‘legal’ in nature has been extended by socio-legal scholars to include not only the formal state-run systems of courts and judges but also other normative orders which establish the social rules and norms of various groups or communities (Merry 1988). As Blomley (1994) states, “‘Law,’ to the pluralists, is altogether more ambiguous and diffuse, existing in partial autonomy from the state” (46). Further, within this pluralist definition of law, boundaries between ‘legal’ and ‘nonlegal’ or ‘extralegal’ matters become blurred as “there is no external domain from which such legal knowledge could itself emanate” (Blomley 1994, 47).

Legal pluralism recognizes that “while there is a cultural core to the state there are also numerous other groups requiring recognition by the bureaucracy of the state. Through pluralism these groups may find recognition within the structure of the state” (Johnson 2010, 276). In tracing how Canadian civil and common law developed over time to uphold culturally-specific values and norms, John Borrows (2010) aims to demonstrate the commonalities between Indigenous and Canadian legal systems, which, he argues, together might best be described as multi-juridicialism.

Richard Day (2001), however, observes that many Indigenous scholars have moved beyond pluralism to envision parallel expressions of self-determination comprised of overlapping, and often incommensurable, claims to those of the Canadian state.
Importantly, the ongoing socio-legal relations and practices of Indigenous peoples internationally assert the operation of legal orders which do not rely on state recognition for their power. The legal traditions of Indigenous people have always provided categories through which social life is organized and through which disputes may be resolved (Borrows 2005), and these laws were used to form treaties prior to the arrival of settlers in Canada, as well as in creating the first treaties between Indigenous nations and European settlers (Borrows 2005). However, while “numerous Indigenous legal traditions continue to function in ways that are integral to Canada’s legal system” (Borrows 2010, 107), other practices continue entirely without state recognition (and in cases such as the potlatch and sun dance ceremonies, they continue despite being made illegal within Canadian law). Indigenous legal scholar James Sakej Youngblood Henderson (2002) asserts that the pluralistic nature of Canadian and Indigenous law undermines the claims of the colonial state over the lives and territories of diverse Indigenous peoples: “The task of Indigenous peoples is to encourage diversity as the prime assumption of legal systems, and to resist any false universality, despite the consequences for existing legal theory” (49).

As Roughan (2009) discusses in New Zealand state-Indigenous relations, the concept of ‘legal association’ in pluralistic legal relations specifies situations in which one system interacts with, and is open to, another when formulating its rules and standards. “‘Legal association’ refers to inter-systemic relationships that are deliberate, involving the integrations, incorporations, or other formal interactions that occur between legal systems. This distinguishes legal associations from the incremental and subconscious interactions that systems inevitably have in a pluralist legal landscape” (136). In these associations, Roughan centers the individual and collective agency and choice involved in references across and among various legal orders, focusing on the prospects and processes of these relationships.

Multiple legal orders have existed in the lands now known as BC since time immemorial, as Indigenous systems of law had diverse jurisdictional claims within their territories and in some places, more than one Indigenous nation held jurisdiction over the same territory. This form of jurisdiction has been used against Indigenous peoples in land claims cases, as Indigenous conceptions of property emerge within a different ontological system of meaning than those of Western law. Historically, “a vibrant legal
pluralism sometimes developed among First Nations" (Borrows 2010, 129), as Indigenous peoples engaged in treaties, intermarriages, trade contracts or other forms of mutual recognition which acknowledged the existence of more than one usage or claim of the same place. These might be understood as forms of legal association, as they are expressions of “the deliberate referral or incorporation of aspects of another system” (Roughan 2009, 143) entailing specific responses to the acknowledgement, and in many cases respect, that people within each system has of the other.

These overlapping jurisdictions can be seen today in places with multiple names from Indigenous nations who hold historic and ongoing relationships (and thus claims) to the same place. For example, what was named as Mount Douglas by settlers in Victoria, BC was recently reclaimed with a WSÁNEĆ name PKOLS (PKOLS website 2013), yet the Songhees and Esquimalt peoples in the area have another name for the mountain³. These different names for the same place emerge because First Nations held overlapping jurisdiction over the mountain, which historically had practical significance for determining the territorial boundaries of these neighboring groups as well as being a lookout point, and a gathering place of political and social significance. I recall these multiple, overlapping Indigenous legal orders which are still at work in the lands now called BC, as they have implications beyond land use, potentially extending to our interpersonal relations as well.

As we can see in the example of PKOLS/Mount Douglas, the legal order governing a particular place or situation is determined by the network of legal meaning an individual belongs to. Within pluralistic legal associations, or references across legal orders, translation may be required by interpreters who can make sense of both systems of meaning. So for a Songhees person, the laws of their nation determine their relationship to this place and, thus, their responsibilities to it. A different meaning is at work for a WSÁNEĆ person. We might consider how these plural spatio-legal meanings could be implemented in the practices through which we address and define contemporary social issues and our relationships to one another.

³ Personal conversation with a member of the WSÁNEĆ community, August 2013. I have anonymized this quote in order to avoid contributing to tension between local communities engaged in dialogue about the name of this mountain.
In this research, I am interested in exploring what the associations (Roughan 2009) formed between multiple legal orders might have to offer for the practical – that is physical, embodied, and interpersonal – efforts to change norms around violence. This is, then, an effort to uncover what forms of legal relations are already in practice in the lives of Indigenous people and what qualitative difference might be made by recognizing them as expressions of pluralistic legal relations in efforts to understand and denormalize violence.

1.1.2 The spatial and the legal: pluralistic relations

This research also has a particular interest in how legal pluralism unfolds in the spatial relations of violence in the lives of Indigenous people in BC. The pluralistic understanding of law brings a significantly different analysis than the existing work on violence against Indigenous people that has already been taken up using a spatial analysis. Existing analysis has focused on the abuse and oppression that occurred at BC’s Indian residential schools (de Leeuw 2007), the lack of legal response to the disappearance of women from Vancouver’s Downtown Eastside as rationalized through ‘spaces of exception’ (Pratt 2005), the legal rationale that dismissed the murder of Indigenous sex worker Pamela George (Razack 2002b) and police negligence in the death of Indigenous men in custody (Razack 2012). As Pratt (2005) demonstrates, “geographies do more than contain or localize bare life. Geographies are part of the process by which certain individuals and groups are reduced to bare life” (1055). These spatial analyses of gendered socio-legal processes through which human life becomes reduced to matter are extremely useful in unpacking dominant colonial rationales through which the violence and dehumanization of Indigenous people is normalized and the mechanisms through which they are enacted. Yet, they only partially account for the possibility of Indigenous peoples’ resistance and ongoing legal jurisdiction due to their broad focus on the specialization of dominant power relations. Some scholars have acknowledged explicitly colonial spaces, such as residential schools, not only as spaces of colonialism but also as spaces in which Indigenous students asserted their agency and Indigeneity (de Leeuw 2007). However, I fear that in the absence of this dual theorization of colonialism and resistance, some widely cited spatio-legal analyses actively deny Indigenous peoples’ vitality, agency and ongoing legal standing as self-
authorized legal subjects, such as by representing us as residents of “a death world” (Razack 2012). As I hope to show, Indigenous people embody not only “the imprint of an ongoing colonialism” (Razack 2012) but also the expressions of our ancestral relations that have held jurisdiction over these territories since time immemorial.

The activation of more than one legal order within a given space and time raises the possibility that a particular legal subject or issue can be recognized within more than one system of law. As Mariana Valverde (2009) has argued, asking why and how something is recognized within one jurisdiction rather than another raises important questions about the operation of power in socio-legal relations. Santos (1987) coined the term ‘interlegality’ to describe the diverse legal phenomena which intersect or intermingle at local, national and international levels. Taking the study of legal pluralism a step further, this work assumes not only that more than one legal order is in operation at any given time, but that the spatio-legal ordering of society emerges from the intermingling of legal regimes. As Valverde (2009) demonstrates, the technical aspects of jurisdiction reveal not only the ‘where’ and ‘who’ of governance, but also the ‘what’ and ‘how’ (or the governing capacities and rationalities). Ultimately, questioning which legal logics frame our understanding of ‘violence’, makes it possible to ask important questions about underlying power relations – in this case, power relations of ongoing colonialism. From an Indigenous perspective, questions about jurisdiction reveal possibilities for recognizing violence within Indigenous law and, in the process, recognizing and reinvigorating Indigenous socio-legal relations that are ontologically distinct from those of the Canadian state.

For example, Harris’ (2008) research on fisheries in British Columbia clearly demonstrates that how fisheries were and are determined to be governed under federal jurisdiction reveals the technical operation of colonial power relations in contemporary Indigenous-settler relations. Further, Harris’s research reveals important information about the spatio-legal ordering through which Indigenous law is made visible in jurisdictional disputes over fisheries.

Investigations into the work of jurisdiction in dynamics of pluralistic legal relations can reveal how different systems of socio-legal meaning emerge within competing or distinct temporalities (Valverde 2009). In the analysis that follows, recognizing violence
within the jurisdiction of Indigenous legal relations at times emerges within a rationale, or
set of norms, which emerge within this longstanding system of meaning. Yet, in other
situations, other spatio-temporalities are at work as Indigenous people grapple with
contemporary situations of violence which require the creation of new knowledge
categories. These necessarily have the potential to offer qualitatively different
understandings of violence than those emerging within the spatially and temporally
distinct set of rights set out in the Canadian Indian Act and Criminal Code. As I will
discuss, categories of violence emerging within the rationales of these pluralistic legal
relations are different than the categories that are possible within categorizations of
‘Indians’ and ‘Indian reserves’ in colonial Canada. Legal geographer David Delaney
(2010) writes, “Indian reservations are the most overtly racialized spaces in American
nomoscapes of race. Reservations are the spatial expressions of ‘tensions’ between
historical and contemporary colonial projects and what is asserted to be residual
indigenous sovereignty, and the ‘tensions’ between liberalism and its exceptions” (141).
Contemporary land use claims of Indigenous people bring forward rival interpretations,
emerging within distinct spatio-temporal frameworks expressed (and enforced) through
Indigenous and Canadian law. Pluralistic legal geographies bring to the surface the dual
social and legal meanings possible within Indigenous law that is always already alive
upon this land. This is echoed in intersectional analyses of race, gender, and colonialism
which utilize a spatial analysis of violence: “Racial hierarchies come into existence
through patriarchy and capitalism, each system of domination mutually constituting the
other. The lure of a spatial approach is precisely the possibility of charting the
simultaneous operation of multiple systems of domination” (Razack 2002a, 6).

One way of understanding the coexistence of systems of socio-legal ordering is
Delaney’s (2010) neologism ‘nomosphericity’ or ‘the nomosphere’, which provides a way
to move beyond just seeing the socio-legal and socio-spatial as intertwined or related,
repositioning inquiry “at a point where they are already recognized as (i) constitutive of
each other, and (ii) constitutive of structures and experiences of power” (8). Delaney’s
description of interrelated or co-existent nomoscapes echo pluralistic ideas of law:
“nomoscapes of, say, race, gender, class, and so on are not other-than each other.
Rather, just as nomic settings can be understood as nested or layered, so diverse nomoscapes may be understood as interpenetrating, super-imposed, and co-conditioning each other. These interpenetration effects produce complex, dynamic fields of nomic power characterized by ambiguities, contradictions, tensions and instabilities that are vulnerable to interpretive reconfigurations” (Delaney 2010, 121). The analysis of violence that I seek to utilize operates in this framework in which multiple systems of spatio-legal or nomic meaning are active in the individual lives of Indigenous people and within our communities, such that the nomoscape of violence produced among Indigenous people are impacted by that of Canadian legal actors such as police and judges, yet offer distinct categories which do not translate across these nomic settings. Within this understanding of colonial spatio-legal relations, Indigenous peoples are not only constituted as subjects within the confines of colonial categorizations (such as ‘Indians’ and Indian reserves), but also always within categorizations emerging in their own legal orders unfolding within and across diverse territories of meaning.

1.1.3 Gaps and separation of law

Third, this analysis of the coexistence of multiple spatio-legal or nomic systems of meaning brings to the surface the mechanisms through which categories of Western law and Indigenous law acquire meaning. Western law as we know it today rests on the taken-for-granted separation between the word of law (or legal representations of the world) and the materiality of the world in which we live. These representations are taken to be true through being naturalized in dominant socio-legal discourse, and integrated into our legal identities. As Mitchell (2002) shows in colonial Egypt, the division of land through property regimes rests on the distinction between state and society that authorizes this division. Taking this distinction as the point of analysis reveals that the power of Western law emerges within a culturally-specific system of categorizing the world in ways that serve the interests of colonial forces, and indeed naturalize those relations. As Blomley (2008) explains, “Law in general, and property in particular, derive their power from the degree to which they appear to stand as a universal abstraction, set apart from the messy realities of local particularities” (161). The violent, the actual, and the exceptional are never gone: “They make possible the rupture, the denunciation, and the order. They are the condition of its possibility” (Mitchell 2002, 79).
This research is interested in understanding the processes through which these gaps and separations imposed through Western legal logics and relations, are implicated in the naturalization of violence in colonial relations. Through looking to Indigenous socio-legal relations and ontologies of violence, I aim to represent this violence in terms which undermine the closure of settlement. Mitchell argues that if the goal is to destabilize the dualisms at the heart of colonial logics, a critique must be developed that does not rest on a dialectical framework: “Law is produced as the difference between the ideality of rights and the physicality of nature, between the abstraction of the code and the actuality of life. The concepts of nature or life in which a dialectical critique is grounded are produced in the political process we are examining” (Mitchell 2002, 79). Following Cover’s (1986) hypothesis that the divisions between textual and material expressions of Western law serve to naturalize and deny the violence inherent in processes of the criminal justice system, I suggest that some Indigenous legal practices operate in ways which intimately link the textual and material realms. Although I would not claim that violence doesn’t exist within Indigenous law, these underlying qualities of intimacy and distance result in distinct ontologies of violence. Thus, I seek to create new definitions of violence and law by investigating the spatio-legal relations through which the word and the actions of Indigenous law are realized.

1.1.4 Categories and categorization

Fourth, this research is concerned with understanding how differing categorizations of violence emerge within these pluralistic spatio-legal relations, particularly when the violence of Western law is understood as conditioning the boundaries around dominant categorizations of violence. As Jones (2009) demonstrates, there has been a rethinking of a whole range of analytic concepts in recent years, including within geography (i.e. space, place, gender, identity and scale), as the social constructedness of identity categories has become widely accepted. Jones calls for efforts to rethink categories and boundaries as processes rather than their compartmentalized outcomes, asking “if we now acknowledge that all of these categories are socially constructed, why do we have such trouble moving beyond them? What provides these categories with their apparent stability and fixity when we know
they are not fixed and stable at all?” (175). Confronting bounded categories, we struggle to get past the assertion that “all human knowledge is dependent upon classification” (Jenkins 2000, 7) or that “things are not quite real until they acquire names and can be classified in some way” (Tuan 1977, 29). Yet, as many marginalized people well know, just because certain lives or knowledge are not visible within socio-legal discourse or within the archives of law and history, does not mean they don’t continue to be lived beyond the view of these recognized systems of classification.

As seen in the scholarship on violence outlined above, foundational socio-legal categories of colonialism remain problematically unquestioned and unexamined, such that the lack of examination of these categories sustains their power. The existing work on violence against Indigenous people largely fails to account for Indigenous ontologies, or to even acknowledge the presence of ontologically distinct Indigenous worldviews, and thus other possibilities for categorizing violence or Indigenous identities.

Indigenous people individually and collectively continue to experience the imposition of systems of categorization which render not only our specific identities as marginal, but that further render Indigenous systems of meaning as impossibilities beyond the knowable/nameable world. What this means in daily life is that Indigenous people continue to try to fit our diversely understood experiences and systems of knowledge into pre-existing colonial categories through which to gain recognition, not only as viable socio-legal subjects, but as coherent and knowable to western thought.

Critical race scholars have shown how the category of race itself is constructed socio-legally, and is not fixed but is constantly remade (Frankenburg 1993; Haney López 1994). Law has been central to defining racial categories, and the boundaries of these categories have shifted across time and space to accommodate (and reinforce) political realities and societal norms. Socio-legally constructed categories of race and gender are made real through the violence of law, and are not static but change over time to sustain hegemonic power relations. Processes of categorization were, and continue to be, central to the power relations of colonialism in BC, across Canada and North America. Here, I seek to understand how the categorizations of ‘Indians’ remains central to law’s inability to address violence against Indigenous people, given the inherent categorization
Indigenous thinkers have demonstrated the ontological distinctions between western and Indigenous systems of categorization and the socio-legal mechanisms through which dichotomous categorizations (such as ‘man’ and ‘woman’, ‘Indian’ and ‘Canadian’) are produced and naturalized. Monture-Angus (1999) critiques western systems of categorization as not fitting with Indigenous systems of thought, as “any absolute dichotomy must be suspicious as no dichotomies exist in the natural world. The creation of dichotomy as a condition of existence is a colonial manifestation” (42). Colonial binaries not only sustain the marginality and subhuman status of ‘Indians’ in socio-legal relations, but also maintain the status of ‘Canadians’ as bearing natural rights to hold jurisdiction over the lands now called Canada. As Culhane (1998) describes, binary oppositions are two-way streets: “when colonizers describe the characteristics of the colonized, they are simultaneously describing themselves, through defining the differences between themselves and their ‘Other.’ Each description of the other is at the same time a description of self” (81). Thus, my investigation into spatio-legal processes through which violence against Indigenous people is naturalized necessarily questions the categorization of non-Indian space (that is, all of Canada) as lawful and orderly spaces within the jurisdiction of Canadian law. Making visible the pluralistic legal geographies alive upon the lands now called British Columbia, the categories emerging from naturalized colonial relations are thrown into question. The logics of appealing to Canadian law for justice in cases of interpersonal violence are actively questioned, and indeed undermined, in the process of recognizing other legal orders which operate through engaging the agency of Indigenous peoples.

1.2 What do I mean by ‘violence’?

Having established the foundational terms in which I have undertaken this study of law and violence, it is important to establish what I mean by ‘violence’ and what lies beyond or outside of the categorization I am choosing to employ. Simply stated, this research is concerned with rethinking definitions of violence in the context of ongoing
colonial relations in BC. Organizations and individuals working to address broad social issues in Indigenous communities across Canada have similarly called for a re-definition of violence: “we call for recognition of the need for a broader definition of the expansion of what is considered ‘violence’ pertaining to Indigenous peoples. The forms in which Indigenous women and girls experience violence come not only from individual actors but systems that ignore Indigenous specific approaches” (NYSHN and FNCFCS 2012, 7-8).

Thus, although I follow the work of such Indigenous scholars such as Patricia Monture-Angus, my analysis of violence differs in a fundamental way. Monture-Angus (1999) writes: “It is important to note that I am separating issues of violence against women in its physical forms and the systematic state violence done to the individual women who were disenfranchised. This is not the same phenomenon and nothing is gained (except for sympathy) by muddling the two experiences. Sympathetic responses to the violence that Aboriginal women currently survive in Canadian society will not change the fact that for many of us this is our predominant life experience. Speaking in clear terms about the kinds of violence that have been done to us is a responsibility that First Nations women must begin to assume” (141). Although Monture-Angus makes this distinction in order to point out how Indigenous people must begin to speak explicitly about gendered violence as a political priority, I instead insist on strengthening the connection between physical and state violence such that we come to define them anew.

As such, my definition of violence will become clearer, or perhaps deeper, as the research unfolds. This emergent definition of violence arises out of questioning the normative way violence is categorized under dominant socio-legal relations, bringing together an exploration of ongoing physical violence with the violence of Canadian law. Yet although it is emergent, this research does center on specific forms of violence.

Violence has been written about as inherent in the disciplining of modern capitalist society, in which violence acts in internalized ways (Blomley 2003) as expressions of dominant power relations. As such, violence does not need to be realized for it to be in operation, but is inherent in maintaining dominant social and political relations. Yet I am writing here of the relationship between the epistemic violence of
dehumanization and erasure and the relentless forms of physical violence which are a product of this dehumanization. The power dynamics underlying colonialism require that I speak here of Indigenous people in terms distinct from those shaping western society more broadly. For Indigenous people, settlement brings specific processes of violent displacement, discipline and marginality made possible through their dehumanization and through being rendered incapable of formulating their own law. These violences – ideological, material, ongoing, relentless, primary – underpin how other forms of violence unfold on a daily basis upon the territories and bodies of Indigenous peoples in settler societies like Canada.

However, it is also true that colonial violence is not the only violence in operation in the lives and lands of the Indigenous peoples of BC. For in recognizing the strength and vitality of Indigenous law, I also recognize the use of violence in these systems. However, I remain concerned with finding ways to more deeply understand ontological distinctions between the violence of Indigenous socio-legal practices and those which emerge within and sustain colonial socio-legal relations. Further, Indigenous peoples’ expressions of violence have been used to reinforce and support our construction as savages. In my own community, the use of ritualistic cannibalism in the hamatsa ceremony was taken as proof of our moral depravity, as a society whose social relations were rooted in cannibalism. It is important to acknowledge that, yes, Indigenous peoples did engage in acts of ‘war’ and aggression, killing, and taking hostages prior to colonial conquest. Yet these acts of violence are difficult to understand, to categorize, in terms similar to those used to describe the violence of colonial relations through which our dehumanization has been accomplished and our bodies and lives made disposable. These questions of how to categorize Indigenous legal violence in relation to colonial legal violence will only be peripherally discussed in this paper. Here, my exploration of violence will focus on the violences of colonialism – ideological, material, embodied, historical and ongoing. Particular facets of colonial violence will be discussed in each section of the paper, as will their interrelations.
1.3 Cases in which violence has become visible

As individual cases of interpersonal violence occur – a woman goes missing, a girl is found murdered, a child is killed by a foster parent, or incidents of historical abuse are uncovered – family and community members often ‘seek justice’ within the Canadian legal system. Police and Crown counsel are called upon to punish those who committed this violence, and efforts are made to look into the broad factors that contributed to the case. While many incidents of violence never make it into the news, police reports, or courtrooms, those that do often entail long and tiresome court processes that fail to result in ‘justice’. Yet, from my work across the province over the years, what troubles me most is the normalization of violence from Indigenous people ourselves. One story that stands out is that of a young woman who had reported a violent gang rape at the hands of a number of men on a rural reserve in BC’s interior. I first heard about her case during my work in the small community in which she lives, where I was conducting community-based research and supporting the development of violence prevention programs. When asked if anything like this had happened to her before, she said that she had been sexually assaulted a dozen times in the past year but hadn’t bothered telling anyone because ‘it wasn’t that bad’. What messages are being sent to young native women to foster this relationship to violence? And what happens when incidents of violence are, at last, reported to ‘authorities’ such as police or social workers? What is achieved by making these incidents of violence visible to technicians within the justice system?

As I will discuss in the chapters that follow, several types of violence have emerged into public discourse in BC in the past 15 years. However, despite the increased ability to name some forms of violence, everyday embodied realities of violence remain unchanged. What, then, is being achieved in gaining public and legal recognition of violence? I will explore three such cases – the cases of Indigenous girls and women who have gone missing or been murdered, the death of Frank Paul who died of hypothermia after being left by police in an alley in Vancouver’s Downtown Eastside, and the neglect and death facing children and youth in the ‘care’ of the provincial government. While each of these cases will be explored in some detail, I will provide the greatest level of discussion for what has become known as ‘missing and
murdered Aboriginal women’, as this is an issue I have worked closely on over the years.

My work on violence against Indigenous women and girls began in the mid-1990's during my undergraduate degree, and I became involved in efforts to bring attention to violence against women, particularly sex trade workers, in Vancouver’s Downtown Eastside as a volunteer for the annual memorial march, and then as an outreach worker for the Urban Native Youth Association. Working alongside members of this community, I saw that it was because of the activism and persistence of women in the Downtown Eastside that serial killer Robert Pickton was eventually arrested and convicted. Further, community and family efforts in Northern BC helped to draw attention to the girls and women who have gone missing or been killed along Highway 16, which is now known as the Highway of Tears.

However, as I will describe, as national efforts to investigate cases of missing and murdered Indigenous women became visible nationally, the geographically distinct relations of violence became blurred. Evidence of this can be seen in the Native Women’s Association of Canada (2010) report which said that although the link between sex work and violence requires greater attention, sex work involvement was not a factor in the disappearance of ‘the missing and murdered women’ – a finding which stands in stark contrast to the violent outcome of stigma and neglect facing sex workers in the Downtown Eastside, and the general dehumanization of Indigenous sex workers in communities across Canada. The rationale for this finding was based on their statistical analysis of national data in which sex work involvement was only known for 26% of the 582 documented cases. Only 51 of the women were known to be involved in sex work at the time of death or disappearance, while another 24 women were possibly involved in sex work. Analyzed differently, one might question whether or not they had enough information to determine whether or not sex work involvement was a factor in the women’s deaths and disappearances, given that they only had knowledge of this in 26% of the cases. Additionally, it could be argued that sex work was indeed a significant factor seeing as half of the victims were sex workers when they went missing or were killed for those cases where sex work involvement was known. Considering that the data collected by NWAC was a combination of news reports, police data and information reported by family members, it might also be important to question what impact the
stigma against sex work had on family member’s willingness to name sex work involvement for their loved ones. NWAC (2010) emphasizes that “involvement in the sex trade is not a ‘cause’ of disappearances or murders; rather, many women arrive at that point in the context of limited options and after experiencing multiple forms of trauma or victimization” (31). While this argument seems to be aimed at dismissing claims that women’s deaths were the result of a ‘high risk lifestyle’, it also serves to minimize the heightened vulnerability of sex workers to violence due to the stigma and criminalization of these people considering the conversation about sex work is not further elaborated in the report. Thus, although the category of ‘missing and murdered Aboriginal women’ is now part of public discourses of violence, I question what this new categorization has accomplished in relation to daily realities of violence or in humanizing Indigenous women and girls, especially for sex workers. Reflecting on this strategy for visibility, I ask what it means for Indigenous girls and women to come to ‘count’ only after they have disappeared.

The second case that has received sustained visibility in the media and public discourse is the death of Frank Paul, a Mi'kmaq man who, like other native men before him, died in an alley in the Downtown Eastside. However, Frank Paul became visible to the public because his death occurred after he was dragged, wet and unable to stand, in to that fateful alley by police. Paul had been picked up due to public drunkenness but the police decided not to put him in the drunk tank, and instead left him outside to ‘sleep it off’. The police’s actions were caught on video and, once the details emerged several years later, Paul’s family and Indigenous leaders pushed for an inquiry into the circumstances surrounding his death and the subsequent police actions (or, more accurately, inactions) to investigate how his death was handled. Although the inquiry did not find the police or Crown counsel guilty of any wrongdoing in the case, it provided a platform for issues of racism and discrimination within the justice system to be raised. Additionally, Commissioner William Davies’ recommendations from the Inquiry contributed to changes in the investigation of police misconduct and cases of potential conflict of interest. Ultimately, however, I continue to ask whether or not the visibility attained in this case resulted in any changes in how Indigenous men are dehumanized. Even after the legal and social attention given to this case, it seems as though any
Indigenous man in any community in Canada can become Frank Paul – culpable for his own violent demise.

Finally, I discuss the visibility given to the treatment of Indigenous children and youth in BC, focusing on the role of BC Representative for Children and Youth Mary Ellen Turpel-Lafond. This position emerged out of a public investigation into the failures of the provincial child welfare system, so is itself an outcome of legal recognition of state violence, or at the very least, neglect. I will discuss the ways in which Turpel-Lafond has worked to make visible the connections between historical treatment of native children in residential schools, the current overrepresentation of Indigenous children in ‘care’ and the systemic inadequacies which continue to result in harms against Indigenous children. I suggest that as an Indigenous legal technician working between Canadian and Indigenous contexts, Turpel-Lafond utilizes her role to bear witness to the continuation of colonial violence against Indigenous people and communities.

1.4 Overview of dissertation

Chapter two: In this chapter, I develop Kwagiulth witnessing as the methodology for this investigation of law, violence and colonialism. While much research on violence in the lives of Indigenous people, particularly girls and women, focuses on high rates of victimization, I am inspired by Eve Tuck’s call to put an end to such victim-centered research which singularly defines a community through its oppression. Instead, I take up a research methodology which centers the agency of Indigenous people ourselves, while taking seriously the daily lived realities of violence we are up against. After discussing the qualities of a witnessing methodology to my insider investigation of violence and law, I outline my sources of data, approach to data analysis and discuss the ethics of insider Indigenous research.

Chapter three: In this discussion of law, colonialism and space, I first discuss the geography of Indian reserves within the settlement process in BC, in order to provide a foundation from which to understand the role of this geography in shaping the day-to-day reality of BC Indigenous communities. Second, I trace the ways that western legal
thought was used to create ‘Indians’ as colonial subjects that were void of their own legal order. This history is useful in understanding how settlers imagined themselves and justified the violent acts which settlement entailed. It also illustrates how the violent erasure of Indigenous legal geographies was naturalized. Third, I ask how ‘Indians’ are imagined in the shift from *terra nullius* to the settler society which produced Indian reserves. Finally I question this narrative by asking how Indigenous peoples’ legal consciousness and subjectivity changes within the context of legal pluralism, recognizing the operation of both Indigenous and Canadian law. As John Borrows (2002) states, Western institutions have the power to hide the truths of Indigenous law’s prior existence but somewhere beneath, “one can discern an older power at work” (Borrows 2002, xii). Here, I suggest several potential ways for legal pluralism to disrupt the naturalized violence of the BC colonialscape.

This section is intended to provide a foundation from which to understand the role of law in shaping the day-to-day reality in Indigenous communities and the potential to address violence through legal means. I hope to show how law structures the categories in which Indigenous people are situated in relation to socio-legal norms. Additionally, I situate my larger exploration of violence within the colonial history of BC’s legal geographies in order to argue that the issue of interpersonal violence should be addressed as an integral part of asserting Indigenous self-determination.

**Chapter four:** While violence against Indigenous people, particularly women and children, has been naturalized into the colonialscape of BC, several cases have brought public visibility and recognition of particular kinds of violence in recent years. The most widely recognized case achieving sustained visibility has been that of missing and murdered Indigenous girls and women, originally focused on violence in the Downtown Eastside of Vancouver, with a subsequently expanded focus across Canada. In this section, I begin by discussing the growth of this discourse around ‘missing and murdered Aboriginal women’, in part through my own involvement in education and research related to issues facing Indigenous girls in communities across BC. This includes cases of missing girls along Highway 16 in northern BC and the widely publicized case of a provincial court judge who was convicted of violently assaulting and sexually exploiting Indigenous girls who had appeared in his court. I then discuss two additional types of violence that have gained recognition and visibility – the death of Frank Paul and the
systemic neglect of children and youth in government care. Using these three examples, I discuss how violence that normatively goes unseen emerged into a topic of public concern, and the legal investigations and actions that resulted from their recognition. While so many incidents and types of violence continue to go unacknowledged, I highlight the individual family and community members who are often at the heart of pushing for legal and social recognition of violence. At the same time, I question what is achieved even in these cases where violence is recognized through court cases or public inquiries, given that they have largely failed to change the levels of violence happening in the daily lives of Indigenous people.

Chapter five: In this section, I summarize the interview participants’ perspectives on engagements with Canadian law in its ability to recognize and respond to violence. I ask what changes have resulted from these cases of increased visibility of violence over the past 15 years. Their analysis emerges from differing levels of involvement with Canadian systems of law and legal technicians such as police, Crown counsel and social workers. Their stories reflect both the continued desire find ‘justice’ within the Canadian legal system and the ongoing lack of faith or belief in that system. Overall, while many Indigenous legal technicians are working to try to create changes by strengthening relationships with police, increasing cross-cultural knowledge, or supporting victims of violence, everyone talked about the harms of that system as further victimizing people who have experienced violence. The violence of engaging with the legal system was seen as integral to the continuum of violence experienced by Indigenous people, as well as its normalization.

Reflecting on the three cases of violence discussed in the previous section, then, I wonder if the only way Indigenous people can be made visible within Canadian law is as ‘Indians’. Efforts to seek justice for individual acts of violence reaffirm our position as being in need of government ‘care’ or ‘protection’ as inherently vulnerable subjects, while the process of seeking ‘justice’ within that system only reinforces our vulnerability as colonial subjects. This analysis then leads into looking at efforts to seek recognition of violence, and change norms around violence, within the more intimate scales of Indigenous law in the next section.
Chapter six: In the research interviews, Indigenous legal technicians discussed efforts to address various kinds of violence through measures that may not be visible within law nor broader Canadian society but that unfold at more intimate scales. In chapters six and seven, I suggest that these initiatives at community, family and personal scales might be understood as expressions of Indigenous law. In chapter six, I first redefine law as it is understood by myself and the Indigenous legal technicians I interviewed. I then explore the enactment of networks of reciprocal responsibilities as the key distinction between Indigenous and Canadian systems of law. Several examples of measures to create new categories of violence arising from Indigenous socio-legal systems are then introduced.

Chapter seven: In this chapter, I explore Indigenous legal geographies, suggesting efforts to address violence form a countermeasure to the violence of Canadian law, providing possibilities for engagement of individual and collective Indigenous power, self-determination and agency. The qualities of these measures are explored, theorizing a pluralistic legal geography of Indigenous peoples in BC which suggests avenues for destabilizing the normalization of violence against Indigenous people. In this section, I explain the nature of visibility within Indigenous law in dynamics of legal pluralism using the observations and examples shared by the Indigenous legal technicians I interviewed. Thus, my analysis is rooted in lived, ongoing, active nature of Indigenous legal interventions in diverse community contexts across BC.

Chapter eight: In this final chapter, I suggest some broad implications that stem from the recognition of Indigenous law as coexisting with Canadian law in the everyday actions of Indigenous legal technicians concerned with violence. First, I reengage concepts from legal geography to understand how violence against Indigenous people is normalized through their ongoing transportation through justice wormholes to spaces where violence is normalized. I then discuss how the recognition of Indigenous jurisdiction opens up the possibility for Indigenous people to escape the wormhole, recategorizing themselves and the violence against them within Indigenous ontologies of law rooted in intimacy rather than violence. I explore some implications for addressing violence against Indigenous people in the sex trade, asking how individual Indigenous people can strengthen intimacy and thus create new responsibilities to prevent violence.
I end by offering some final reflections about my orientation toward spaces of transformation in which we can each witness one another anew.

2.1 Researching violence: an insider approach

I grew up with my mom, away from the reserve where my dad’s family lived, but I visited there every so often for ceremony. Driving the length of Vancouver Island to its northern shores, I participated in our potlatches and feasts, enactments of our rights as Kwagiulth people. Yet each time I visited, some violent incident infused my experience of this place. In junior high school, my mom and I moved to a reserve in Victoria, where she still lives, and where I lived until I was 17. Here, I became more familiar with daily life on reserve and came to understand the diversity of social, political and cultural influences which give reserves their texture. No longer associated just with violence, on the one hand, and ceremony on the other, the reserve became my home, where I lived, slightly out of place, with my white mother. The reserve is therefore not a far-off place for me, a site of my work, nor purely an imagined geography of colonialism, but a place with which I am intimately familiar, having inhabited them as a status ‘Indian’, crossing the imagined borders which give reserves their shape and meaning.

In addition to this intimate relationship with imagined and real Indian reserves, this research also emerges out of a long-standing relationship with violence: ongoing, unceasing, mind-numbing violence in the lives of Indigenous peoples across the diverse lands of what is now called British Columbia. Over the years since I graduated with my Bachelor of Arts in 1999, I have worked as a consultant in communities across BC in partnership with government agencies, First Nations bands and community groups to address youth sexual exploitation, intergenerational abuse, intimate partner violence, suicide and other such issues. Moving between the small northern community of Atlin to Vancouver to rural communities in the interior of BC, to mid-size cities such as Nanaimo and Kamloops, I have heard stories from victims and perpetrators of violence, as well as
developed strategies and tools to address that violence. Thus, I bring not only an intimate relationship to reserves and to violence, but also to the Indigenous communities whose relationships to law and violence I seek to better understand in this research. As such, I position myself as an ‘insider’ researcher insofar as I am an Indigenous person who is conducting research within communities of which I am a member and participant. More explicitly, I have chosen to interview my peers, people who grapple with many of the same dilemmas as I do as we seek to change norms around violence in our own communities as Indigenous people.

For me, there is no shock and awe factor with these issues. I’m no longer surprised by violence itself, though it has certainly changed me. Sometimes these stories take the wind out of me. They flatten me. Understood as violence aimed at my extended network of Indigenous relations and neighbors, these incidents form a matrix of stories, people, and communities to which I am responsible.

In this chapter, I outline my use of Kwagiulth witnessing methodology for this investigation of law, violence and colonialism. While much research on violence in the lives of Indigenous people, particularly girls and women, focuses on high rates of victimization, I am inspired by Eve Tuck’s call to put an end to such victim-centered research. Instead, I take up an approach which centers the power and agency of Indigenous people ourselves, while taking seriously the daily lived realities of violence we are up against. After discussing the qualities of a witnessing methodology, I outline my sources of data, approach to data analysis and discuss the ethics of insider Indigenous research.

As a mixed-blood Indigenous person who has European ancestry from my mother’s lineage, I am acutely aware of the slipperiness of ‘insider’ and ‘outsider’ identity categories. I do not seek to assign any value to my ‘insider’ status (for example, that it is ‘better’ than research conducted by non-Indigenous people on these same issues), but wish to be forthright about my position as someone who has intimately grappled with the themes and material realities described in this research for my entire life as an Indigenous person living in neo-colonial British Columbia. Further, I follow Maori scholar Linda Tuhiiwai Smith’s (1999) call for insider research to be conducted by Indigenous scholars, informed by research priorities that arise from within their own community realities, cultural protocols and epistemologies.
2.1.1 An end to victim centered research

I originally intended to focus my research on law and violence on BC Indian reserves, understanding how law impacts cycles of violence on reserve. However, as I came to understand the geographies of colonial relations through which BC has come into being, I saw that the rationales that are put to work in creating Indian reserves are reproduced in categorizing ‘Indians’ regardless of where we move within Canada. Both on and off reserve, violence is normalized through our categorization as colonial subjects. Simultaneously, this violence is, and always has been, resisted by Indigenous peoples’ refusal to assimilate into Canadian culture and to be dispossessed of their ancestral rights, territories and identities. Indeed, as the underlying geographies of Indigenous territories came more strongly into view, I began to see multiple geographies, as infused with agency as they are with violence.

Thus, although this research is about law and violence, it is not just about victimization. It is surely important to investigate both the nature and extent of violence endured by Indigenous people, and the way that people who experience this violence understand and cope with their victimization, including developing an identity as a ‘victim’ or ‘survivor’. However, having focused on this victimization for many years, I am increasingly cautious not to reproduce discourses about Indigenous women which portray us only as victims, as it has been argued that such damage-centered research frames our communities as “spaces saturated in the fantasies of outsiders” (Tuck 2009, 412). Research which focuses exclusively on colonial dynamics of power is at risk of reproducing the colonial categories it seeks to understand, as “the danger in damage-centered research is that it is a pathologizing approach in which the oppression singularly defines a community” (Tuck 2009, 413). Certainly, this tendency can be seen in some investigations into relationship violence and violence against Indigenous women. I hope to show here that all spaces imagined through the lens of the reserved ‘Indian’, centered around our status through the Indian Act and our position as colonial subjects, are such spaces. In order to create our communities as saturated in Indigenous worldviews, we must move away from damage-centered discourses in talking about our lives and ourselves as socio-legal subjects. This is difficult to say and perhaps difficult to accept when it comes to violence. It is difficult to stop going over and over the mind-boggling statistics of violence upon the bodies of our loved ones. It is
difficult to stop asserting over and over again the extent of victimization against the children and youth in our communities. Yet, as I will show here, if we bring our lived realities in to conversation and develop new language in which to situate this violence, it is possible to acknowledge this violence while not reinforcing our victimization.

I follow the work of Alaskan Indigenous scholar Eve Tuck (2009) in using a framework of desire which “recognizes our sovereignty as a core element of our being and meaning making; a damage framework excludes this recognition” (423). Considering the representational shifts that were made possible in my auntie’s portrayal of dzunukwa, two central guideposts emerged in my approach to writing about violence as an Indigenous scholar. First, I wanted to remain grounded in daily realities of violence – material, embodied, lived, relentless violence. This is where my responsibilities lie. Yet, I also want to write about violence in a way that is not retraumatizing to myself or other readers for whom this violence resonates all too deeply. We need to foster an embodied, emotional and meaningful response to violence so that we avoid becoming numbed to it, while creating knowledge about ending violence within a paradigm of healing and transformation. This language is not something I am yet comfortable with – discussions of healing sound all too cozy and hopeful for me. But I was reminded of the importance of healing by both the people I interviewed and the scholars whose work came to inform my methodology. Holding violence and healing in tension is challenging. However, to this end, I talk extensively about how we understand violence, the prevalence of violence, and our relationships to violence, while avoiding detailed descriptions of specific physical acts of violence. I also focus on developing language with which to talk about the interwoven nature of material and ideological violence, as it is embedded in the landscape of colonial Canada such that even when we point out its existence over and over, it still fails to ‘matter’.

Here, I take up Tuck’s call to join her in “re-visioning research in our communities not only to recognize the need to document the effects of oppression on our communities but also to consider the long-term repercussions of thinking of ourselves as broken” (italics in original, Tuck 2009, 409). As Tuck explains, the urgency of this Indigenous methodology “comes from feelings of being overresearched yet, ironically, made invisible” (Tuck 2009, 411-12). Maori scholar Linda Tuhiwai Smith (1999) writes of the importance of celebrating the survival and strengths of Indigenous people through
research which reframes issues in terms that reflect the strengths, as well as the challenges, of Indigenous communities. Reframing violence as not only a social ‘problem’ but as a consequence and expression of colonialism is one way to “resist being boxed and labeled according to categories which do not fit” (153).

One of the challenges of working on this issue over the years has been the denial, silencing and overall erasure of realities of violence facing Indigenous peoples, both materially and ideologically. How does one write about something which is rendered an impossibility through western discourse? Although geography, socio-legal scholarship and other scholarship have taken up issues of violence, my concern has been that these accounts have failed to center the agency and voices of Indigenous people ourselves. Rather than working with pre-determined ideas about what constitutes violence and what constitutes law, I instead wanted to open up each of these categories to reconfigure them in light of the lived experiences and analyses of Indigenous people who normatively do not inform scholarly understandings of these concepts.

2.2 Witnessing as Kwagiulth research methodology

It was within the context of working simultaneously in as advocate, educator, researcher, and sometimes relative, that I have become a witness to stories of violence. Whether in urban or rural areas, on reserve or off reserve, the stories bore a striking similarity to one another, as did the response (or lack thereof) from police and other state officials. Defined by principles from the Kwagiulth legal tradition of the potlatch system, my work is driven by the responsibilities that are inherent to witnessing these realities of violence, as well as their normalization and the continuation of violence in the daily lives of Indigenous people. Rather than drawing from generalized knowledge about violence, my role as a witness emerges within the individual stories that were shared with me, and the quiet moments I spent in close relation to people of all ages and genders who have experienced some form of violence. Many of the people who became colleagues in this work and participants in this research—Indigenous people, primarily women, who are speaking out and taking action to address violence in their community—have also shared their own histories of violence and abuse. Like sitting in
the bighouse, watching my relatives dance around the fire, my knowledge of these issues has been embodied, emotional, and relational. Where academia attempts to train us, as Indigenous researchers, to capture knowledge in a particular way within the confines of an individual research project or paper, this kind of relational learning defies false divisions between academic knowledge and other aspects of our being. It is instead part of a lifelong journey of taking up my duties and responsibilities as Kwagiulth.

Acting as witness responds to Spivak’s (1988) call to attend to the ways in which subaltern voices are written out of the archive, or the ways that discourse disciplines what can be heard. Being a witness means sometimes creating new language, new stories, new avenues for validating those voices that are most at risk of being erased. In concluding that “the subaltern cannot speak” (104), Spivak was not arguing that the subaltern woman literally had no voice, but that “if there was no valid institutional background for resistance, it could not be recognized” (Spivak 2010, 228). Witnessing, then, might be understood as a methodology in which we are obligated, through a set of relational responsibilities, to ensure frameworks of representation allow for the lives that we have witnessed to be made visible.

This obligation is particularly vital in the context of normalized violence against Indigenous girls and women, as it has been argued that sexual violence is a central tool of colonialism, enacting and reinforcing Indigenous peoples’ status as less than human. Andrea Smith (2005) writes, “the extent to which Native peoples are not seen as ‘real’ people in the larger colonial discourse indicates the success of sexual violence, among other racist and colonialist forces, in destroying the perceived humanity of Native peoples” (12). Through witnessing violence in my own community as a teenager, I felt compelled to help women and girls who had experienced violence by validating their experiences through research. However, since that time, my understanding of the power dynamics of academia and processes of knowledge production have caused me to refine how I understand my role as witness to colonial violence. In part, this has been informed by seeing how research itself can work to entrench positions of power, which is so often the case (and indeed, the goal) of academic work. While violence against Indigenous women, and the stereotypes that justify and normalize this violence, impact us all, researchers are often in positions of power or privilege relative to the people whose lives they write about.
Western concepts of time and space include a perception of distance which is fundamental to rational and impersonal systems of power and governance (Smith 1999). In a research context, distance implies a neutrality and objectivity. However, Indigenous research, and specifically here, witnessing methodologies, insist on working in an intimate network of relations—the very opposite approach to this Western distancing. Emerging from the development of this knowledge-in-relation, when I say I was witness to many stories of violence, I do not mean merely that I heard, saw or observed these stories. As I have come to understand witnessing methodology, I view these experiences as shared with me in the context of reciprocal relationships with an Indigenous cultural framework, and in witnessing the stories, I am obligated to ensure they are not denied, ignored or silenced. Further, if I see them being denied, it is my responsibility to recall both the truths of what I have witnessed and the ways in which their erasure is being accomplished. In my own teachings, the responsibility of witnesses to recall what they have seen is particularly important when something is called into question, or is at risk of being lost. I see this to be the case with the normalization of violence, and the silencing or stigma faced by victims when they try to speak out.

2.2.1 Foundations of Kwagiulth witnessing methodology

My approach to witnessing emerges from my experiential understanding of the Kwagiulth potlatch system in which witnesses are paid to remember what has transpired during the business of a potlatch. Building on witnessing testimony or stories (Iseke 2011), Kwagiulth witnessing includes the bodily actions involved in continuing the materiality of a shared experience. Bearing witness in the context of a potlatch involves all the senses, not only the passing on of a story, facts or information. As I have come to define it, witnessing is about the affective, embodied, spiritual role that emerges from sitting among relations in the context of a sacred place of cultural business. Thus, my role as a witness is dependent on the quality of relations within which I do my research on issues of colonial violence, operating in tension with the values underlying academic knowledge creation within universities, their ethics processes, need for solo authorship, and rigid boundaries around the roles of researchers and research subjects.

Within this Kwagiulth legal tradition, everyone in attendance at a potlatch is paid in goods or money at the end of the feast, not only Kwagiulth people. Thus, anyone who
participates in the potlatch as a witness is brought into the network of relations in which the integrity of this form of law is maintained. Although Kwagiulth people alone have specific positions or “seats” within the feast system, as well as rights to the dances, ceremonies, crests, songs and other aspects of the potlatch, which are not transferable to witnesses, witnesses do take up an important role in recalling, reinforcing and substantiating the legal proceedings or ‘business’ that have taken place. Thus, it might be deduced that within this Kwagiulth methodology, the role of the witness is not specific to Kwagiulth or Indigenous people alone, but could also extend to other people working within networks of reciprocal responsibility to BC Indigenous peoples. Additionally, witnesses are called upon to collectively recall what happened, in order to reinforce, rather than replace, the individual whose ceremonial act was in question. As witnesses, then, we should not seek to become the voice of those whose stories are denied, but should work to make them more viable, more visible, more audible, and more deeply felt, on their own terms.

As I have outlined, Kwagiulth witnessing methodology is not akin to simply hearing, seeing or being told something. Witnessing here is taking up a specific role in the maintenance of the integrity of Indigenous knowledge and communities. It entails an obligation to act through recalling what one knows to be true, given that violence continues to be normalized. It requires us to bear witness to the epistemic violence of forgetting certain stories, as much as the stories themselves. As academics, witnessing assumes working across a range of intersecting power relations that we must navigate as we determine how best to live up to our responsibilities. As witness, we have a role that is not to take up the voice or story of that which we have witnessed, nor to change the story, but to ensure the truths of the acts can be comprehended, honored and validated. Colonial violence is normalized through ongoing denial, silencing and ontological gaps that make it impossible for Indigenous peoples’ stories to be heard on their own terms, particularly stigmatized women like those working in the sex trade or Two-Spirit people who are constantly being dehumanized. Thus, the need for us to step up as witnesses remains as vital as ever.

Although emerging from systems of knowledge creation, law and governance within diverse Indigenous oral cultures, witnessing has only recently been explored as a methodology in Indigenous scholarship. Witnessing has been discussed in such fields as
Indigenous storytelling (Iseke 2011, Thomas 2005), child and youth care (Kovachs et al 2007), family therapy (Richardson 2012) and the Indigenous paradigm of insurgent research (Gaudry 2011). In each use of witnessing, Indigenous scholars draw their understanding of this approach from the cultural and institutional contexts in which they live and work. While my framework of witnessing shares similarities with some of these scholars, it is distinguished by its specific roots in potlatch traditions and adaptation to account for the power dynamics of research on contemporary social issues. The principles and foundations of witnessing methodology would therefore not necessarily be applicable to working with traditional knowledge, as my concerns emerge within the power relations of colonial violence.

Witnessing entails creating knowledge not as solitary actors (Iseke 2011), but within a network of reciprocal relations. As Kovachs et al (2007) write, “we chose to notice—witness—the work being done within Aboriginal child welfare from our own stories” (116). Yet Kwagiulth witnessing methodology differs from Kovachs et al, in that it is inherently bound up in relations based in responsibility. I therefore experience witnessing not as a choice, but a duty, to recall something that is being questioned. I have felt bound by my role to bear witness to the violence experienced by my family members and those who have shared their stories with me, within the larger network of community responsibilities that ensures the continuation of Indigenous knowledge, law and culture.

Witnessing can involve acts of remembrance as “a powerful form of recovery from a colonial past” (Iseke 2011, 312) in which we reinterpret the past in order to understand the present. Kwagiulth witnessing methodology uses a different temporal frame, as stories are recalled and enacted to make them alive in the present rather than making sense of their past use. Potlatches are about re-embodying stories that make us who we are, acknowledging and respecting an ongoing, active set of responsibilities. Thus, recalling an event or story as a witness is about bringing those responsibilities into the present through affirming their power.

Witnessing has been used in the recreation of collective spaces in which to validate the contemporary experiences of Indigenous people through ceremony. For example, Richardson (2012) calls on witnesses as part of marking important life events
in family therapy using cultural witnessing groups. Here, witnesses are invited to be part of a contained therapeutic space, where they do not question or have conversation with those in therapy but listen, observe, and remember. Witnessing here occurs within a set of reciprocal relations, as “there is an implicit future commitment to social justice and social change in return for the gift of the learning” (72). Similarly, Kovachs et al (2007) use witnessing as a framework for examining resistance and resilience in Aboriginal child welfare through the creation of a feast to honor community members who support local child welfare programs. Here, witnesses, “…hold the memory and retell the activities of the event. The act of witnessing is an integral part of the oral tradition as it is the means by which a public accounting of the work being done will live on in the oral history of the community” (98).

Given the normalization of widespread violence and the internalized shame experienced by many victims, this need for collective validation resonates with my understanding of witnessing. In this research, witnessing can become central to undoing the harms of colonialism by centralizing the voices of a network of Indigenous people who have witnessed violence and efforts to address violence among Indigenous diverse Indigenous communities in BC. In participating in this research, I understand each person to be acting as witness to the lives and deaths of their relations, community members and friends. This collective process works against the dehumanizing effects of categorizing Indigenous people in colonial terms by centering our agency in the formulation of theories of violence and law. This witnessing also acts as validation of the embodied and epistemic violence which is naturalized in colonial processes and power relations.

At its heart, witnessing is about the persistent reintegration of voices of marginalized people in processes of knowledge creation. It is about making visible and audible those members of our communities who are silenced, forgotten, erased, and spoken over. Witnessing emerges within dominant power relations in which the voices of academically trained researchers are privileged over those of other members of Indigenous communities, such that we must be attuned to the responsibilities that come with our multiply-situated identities (within universities, our own communities, other Indigenous communities, and so on). As my work unfolds across these spaces, I find processes of self-reflection vital to fulfilling my responsibilities as witness. In recalling the
truths of violence around me, I am called to use my own voice to acknowledge the stories and voices of those that are in need of validation. Weaving my own perspective and knowledge together with those that are suppressed, denied or silenced, I take up my responsibilities as Kwagiulth, situating my scholarship as connected to “claiming a genealogical, cultural and political set of experiences” (Smith 1999, 12) as an Indigenous person. Indeed, if we can collectively reorient ourselves toward systems of law in which violence can be denormalized, bringing about changes in experiences of interpersonal and systemic violence, the work of witnesses such as myself will no longer be necessary. Within this network of relational responsibilities, witnessing can adapt and change as we aid one another in the healing work of decolonization. Importantly, however, witnesses also play an important role in other legal traditions, including Western law. Therefore, before I move ahead with exploring the potential of witnessing within a pluralistic legal framework, I will briefly discuss some of the differences between witnessing in Western and Kwagiulth legal systems.

2.2.2 Witnessing in Western common law

While Western uses of witnessing lies beyond the scope of this paper, it is worth noting some ways in which ‘witnessing’ in this context differs from that which is being used in this research. Two processes of Western law illustrate these differences: the role of witnesses giving evidence in a court case and that of members of a jury. In Western law, juries are part of a system operating through a framework of impartiality which relies on a sense of distance between the members of the jury and the people involved in the court case. The Canadian Charter of Rights and Freedoms stipulates that the right to be tried by jury is limited to offences where the maximum punishment is imprisonment for five years or less (11f). According to the Law Reform Commission of

6 It would be very interesting to look at the commonalities and differences of witnesses in the potlatch system and other Indigenous legal traditions which use witnesses, as well as in Western legal traditions which rely on witnesses to provide evidence in court proceedings. In each case, community and scholarly knowledge is available on the imagined role of witnesses in ‘fair’ legal processes, how the role has changed over time, who is allowed to be a witness, and how witnesses impact the ability of particular subjects to seek ‘justice’. For example, the history of the jury is full of racial, gendered and class dynamics which might provide some insights into the nature of western law as well as exposing some similarities or differences to Indigenous legal traditions. I hope to take up these questions at a later date.
Canada (1980), the jury has five functions in modern criminal proceedings: the jury is a fact-finder; the jury acts as the conscience of the community in criminal proceedings; the jury is the ultimate protection against oppressive laws and the oppressive enforcement of the law; the jury is an educational institution, and; the jury helps to legitimize the criminal justice system. It is because of their distance from a case, and thus their supposed objectivity, that members of a jury are said to be able to properly assess the ‘truth’ of a case. Yet juries are also supposed to represent a cross-section of the accused’s ‘peers’ or community members. Of course, ‘neutrality’ and ‘peers’ are also culturally defined, as who can and cannot serve on a jury in Canada has changed over time. The purpose of the witness is to support the idea that the legal system operates without prejudice, as, in their ‘fact-finding’ role, jurors are tasked with listening to the evidence to determine the ‘truth’ of the case. However, this framing of factual evidence does not take into consideration the ways in which individual people bring their own prejudices to bear on their determinations of ‘truth’.

Within this same legal tradition, witnesses are called upon to give evidence of ‘truth’ in this same ‘fact-finding’ mission. This giving of evidence by witnesses might also be understood as a process of storytelling (Bennett et al, 2012). In British Columbia, it is up to Crown counsel to decide whether or not there is enough evidence to go forward with a court case. Often the ability to provide this evidence rests on witnesses who will testify in court. But how do Crown counsel make decisions about whether or not someone is a credible or reliable witness? And when a case gets to court, how does a judge decide the same? As is well known in the history of William Pickton’s interactions with the justice system, questions have arisen as to why he was not tried in court when he was arrested in 1997 on attempted murder charges (Oppal 2012; Bennett 2012). Pickton had handcuffed and stabbed a sex worker whom he had picked up in the Downtown Eastside. Crown counsel lawyers decided to stay those charges because the witness (the woman he stabbed) was deemed to be unreliable due to her drug use and supposed ‘instability’. Thus, the women who live and work in the Downtown Eastside who were most able to speak to Pickton’s violent and murderous behavior were ultimately deemed not reliable enough to even bring the case to court despite the physical evidence of his guilt. Although there may be some similarities between Indigenous and Western uses of witnesses within various legal processes, this illustrates
some of the ways in which the Canadian court’s requirements of a witness differ from the qualities of Kwagiulth witnesses— in Western terms, distance, neutrality and objectivity are required and in Kwagiulth terms, investment, intimacy and relationships are ideal. Having described some aspects of the cultural-specificity of witnessing in Western and Kwagiulth contexts, I now move to discussing the potential within a Kwagiulth framework for witnesses to work with other legal technicians within a pluralistic legal framework, bringing about possibilities for enacting legal norms in which Indigenous peoples’ humanity can be restored.

2.2.3 Scaling down: a network of legal technicians

In daily life, the power of law is realized though the routine actions and decisions of people who are in privileged relationships to law. Police, judges and lawyers have a productive relationship to socio-legal worldmaking. Understanding law to be more than just the formal legal system, this group of technicians can be expanded to include social workers, mental health workers and other individuals who have the authority to enforce legal norms or rulings, sanctioned by the state within a privileged relationship to law. If we understand that law, society and space are performed relationally, acquiring meaning through social action (Blomley and Bakan 1992), every social actor can be understood as a legal technician. The role of non-legal actors can be traced through a de-centered map of law, addressing how informal, customary practices of law operate simultaneously with formal legal institutions and legal actors (Borrows 1997).

Socio-legal scholar David Delaney (2010) refers to judges and lawyers as nomospheric technicians, signalling their creative role in spatio-legal or nomospheric power relations: “Nomospheric technicians are social actors who have a privileged, productive relationship to nomic traces and the pragmatic activities of nomic inscription. They are authorized to make a certain kind of legal sense of disturbing situations” (157). Delaney goes on to explain that while all social actors make sense of disturbing situations, these technicians do so in circumstances that lead to specific results. While operating in constrained roles, judges and lawyers also do work that is “creative, often innovative, and the materials they work with are amenable to diverse reworkings” (158). Thus, Delaney discusses the agency of individual technicians by tracing “the work—the
real labor—that nomospheric technicians perform with the end of advancing, resisting, or limiting the effects of such transformations” (158).

However, within a pluralistic legal framework which recognizes the ongoing enactment of Indigenous systems of law upon and within the lands now called British Columbia, the category ‘nomospheric technicians’ would necessarily expand. Following the work of Delaney, I seek to trace the practical work and process of ‘making sense’ undertaken by Indigenous technicians, but understand the network of Indigenous legal technicians to be much broader. Here, I examine a network of Indigenous technicians involved in utilizing various socio-spatio-legal mechanisms to address violence, emphasizing their agency as legal actors within pluralistic legal relations.

This research seeks to identify opportunities to engage the agency of Indigenous people as legal technicians, not merely in the role of victim but as experts, resisters, and agitators for change. These stories of Indigenous people working at a community level to address violence are normatively written out of the legal archive and are left untheorized in scholarship on Indigenous law. This research works against the erasure of these powerful socio-legal changes taking place in communities in order to make visible the potential for these efforts to undo dominant socio-legal relations and to allow Indigenous people to represent ourselves on our own terms. Reconfiguring categorizations of Indigenous subjects may involve a shift toward agentic rather than purely victim status. Although some violence may come to be made visible to the public through its recognition by legal technicians such as police, judges and Crown counsel, who have a privileged relationship to law, other forms and incidents of violence are visible to Indigenous people working at a community or local scale. These cases, too, shape Indigenous peoples relationship to law and violence, and the impact of their ability to recognize this violence is honored in the process of centering their voices as Indigenous legal technicians.

Although violence against girls and women will be investigated in this research, I am interested here in questioning the way that gendered violence is portrayed in relation to broader colonial violence. This is not because I doubt the high rates of violence experienced by women – indeed, working with female victims of violence has been a large part of my career – but because I want to understand how the categorization of
gendered violence shapes our understanding of its relationship to other forms of violence. As I have argued elsewhere (Hunt forthcoming), the racialized gender binary might itself be understood as an expression of colonial violence, considering its erasure of Two-Spirit and other non-binary Indigenous gender identities. This erasure is often reproduced in gendered research which focuses exclusively on women and girls, and I am instead interested in developing definitions of violence which do not perpetuate this colonial violence. Additionally, I have found that ‘Indigenous woman’ has become a category that is equated with ‘victim’ in many anti-violence approaches and I seek to challenge this equation by centering individual Indigenous women’s power and agency and talking about women’s experiences in the context of broader family and community relations.

2.3 Data sources

2.3.1 Interviews

The interviews in this research were designed to do two things: first, to enact a network of knowledge which is central to the operation of Indigenous law, and second, to begin to get a sense of the expertise held by Indigenous legal technicians within a pluralistic definition of law. The interviews were not intended to provide an exhaustive account of anti-violence measures being undertaken by Indigenous communities in BC, nor were they intended to provide evidence or ‘truth’ about levels of violence in this province. Instead, the interviews were intended to build on my already existing knowledge of violence and law, given the many years of in-depth conversations I have had on these issues in communities across BC. I chose to interview a smaller number of people with long-term experience working in this area, asking questions that assumed a certain level of shared knowledge about violence and law in Indigenous communities. The interviews help to form an analysis of law and violence based in the materiality of ongoing colonial relations, and to get a sense of the real impact of Indigenous community practices, and of their future potential to shift norms around violence.
I interviewed 11 people between July 2012 and March 2014 in Victoria, Vancouver, and Prince George. I chose interview subjects who work in communities across BC, although their homes or offices may be in these urban centers. 9 women, 1 man and 1 Two-Spirit person participated. I knew a number of the participants prior to interviewing them, having worked with them or heard of their work in the past, while others were suggested to me through other research participants. I chose to interview people who have been working on issues related to violence and law over a number of years, so that they could speak to changes they have witnessed as the missing women case has gained recognition and visibility.

Each interview was approximately 1 to 1.5 hours, although some took as long as 2.5 hours. I audio recorded the interviews and also hand wrote notes as we talked. They were semi-structured, as I used a set of questions that were adapted to the individual person’s work in this area. I also allowed the participants own interests to guide the interview, as I followed stories or issues they raised in order to probe more deeply in to them rather than bringing them back to the set questions at hand. In this way, the interviews involved a process of collaborative meaning-making, as we had more of a conversation than a standard interview. Some of the participants were familiar with my work, and I was familiar with theirs, which gave the interviews a more intimate quality. Because I bring an understanding of issues of violence in the communities they work with, they did not have to explain a lot of background information as they would for someone who was unfamiliar with the issues or communities. After the interviews, I made notes about some of the key ideas that had emerged, including areas of overlap with other interviews and new terms or concepts to think more about.

2.3.2 Intimate knowledge, participant observation, and other sources

Participant observation, field notes and other such methods are sometimes used in qualitative research to accompany interviews, in order to triangulate data. However, I am essentially already a participant observer because I live and work in the communities in which the research participants live and work, and in which the events I investigate have taken place. Thus, this research is infused with a lifetime of observation, note taking, journaling, self-reflection, mourning, and personal investment as an Indigenous woman working on questions of violence and law. This material is difficult to categorize.
and account for, but the wealth of knowledge I have gained in my work on this topic infuses my analysis.

Additionally, this research was informed by the written material I have gathered over the years, including community pamphlets, news media, videos, community research reports, comics, and posters. I researched archival or written sources focused on the missing women, Frank Paul and kids in care cases in BC, including documents created by the Missing Women’s Commission of Inquiry, the Frank Paul Inquiry and the Office of the Representative for Children and Youth. These three examples are used as case studies to investigate how certain types of violence have been made visible and have gained public and legal recognition over the past 15 years in BC.

2.4 Data analysis

2.4.1 Oral knowledge and dialogue based meaning-making

While in some legal traditions, such as the potlatch, oral methods of knowledge transmission are used to verify or validate specific actions or historic events via the role of witnesses, oral knowledge has diverse purposes in other contexts and legal traditions. Orality is used not only to recall events or tell the history of a people, but is also used to develop culturally- and place-specific meaning attributed to those stories. As John Borrows (2001) writes of the values and challenges of oral traditions, “Oral history presents both risk and insight because it simultaneously intermingles the events that took place in the past and the meaning that people ascribe to those events” (5). Within my Kwagiulth witnessing methodology, I sought to develop methods of analysis that were congruent with the use of orality and storytelling in Indigenous legal traditions in order to identify important events and the meaning of those events shared in the interviews. In her work on Indigenous methodologies, Kovach (2010) writes that “within qualitative research, Indigenous researchers struggle to maintain oral tradition for a number of reasons. One reason is to be congruent with tribal epistemologies that honour our rich ancestry. Another equally forceful motivation is to ensure that holistic, contextualized meanings arise from research” (96). Thus, rather than transcribing the
interviews into textual format, my analysis of this data followed an Indigenous oral method of repeatedly listening to the interviews. Oral methods of knowledge transmission have been used by Indigenous people the world over as the basis for Indigenous systems of law: “the oral transmission allows for a constant recreation of First Nations systems of law” (Borrows 2002, 141). This ability to reinterpret legal knowledge to suit contemporary problems is one strength of oral legal traditions, and I sought to draw on this methodology in my efforts to develop emergent theories of law and violence rooted in community knowledge.

In this spirit, the interviews were analyzed to get a sense of both the impact of increased recognition of violence in BC, as well as the ways violence is being addressed in cases that do not gain recognition within formal systems of law, and the way the Indigenous legal technicians experienced these initiatives. The stories of the individual research participants were also analyzed as central to understanding the complex roles and responsibilities of Indigenous legal technicians in changing norms around violence. I listened to each interview repeatedly in order to identify key ideas within each interview, as well as common themes across the interviews. Immersing myself in the conversations between myself and this network of experts, a storyscape of violence, law and resistance emerged out of which my analysis developed. I created an initial mind map of ideas and themes within the data, and then began pulling out key quotes and ideas from each one. The mind map allowed for themes to shift and change easily as my analysis developed, as I added to and revised it each time I listened. Rather than looking only for points of connection, I also pulled out points of tension and unexpected oppositions in order to center the complexity of knowledge contained in the interviews. As much as possible, I allowed the fullness of stories and ideas to infuse my analysis rather than allowing my pre-conceived ideas from my years of work on this issue to pre-determine the outcomes.

Reflecting back on the process of listening to the interviews repeatedly, it is important to note the emotional depth and quality of this oral transmission of knowledge. While I conducted the interviews myself, I was impacted differently as I listened to the interviews for a second and third (or more) time. Over the years of conducting research, educational workshops and other engagement with individual stories of violence or conversations about violence, I have had to develop ways of focusing on the person I
am talking to while taking responsibility for containing the conversation. Although I do not have a background as a counsellor, I understand containment to be a responsibility of asking someone to open up about violence, especially their own experiential knowledge. While most of the participants were not asked directly about their own histories of abuse, many shared personal stories of violence or engagement with the legal systems, as well as sharing stories of violence they have witnessed.

The first interview I conducted was probably the most intensely personal, as the participant shared her own stories of abuse starting in childhood, and moved through violence suffered by her own family members, before talking about her work on these issues. After leaving the interview, I cried on the ferry ride back to Victoria, staring out the window as I reflected on what I had just heard and the enormity of these issues in our communities. The deep vulnerability of doing this research is an important part of my own meaning making through the analysis process, as I felt similarly moved to tears by the stories of violence and injustice, as well as the stories of strength and resilience, that the interview participants shared. I believe this emotional quality was an important part of my own learning process and it would not have been achieved in the same way if I had transcribed the interviews and then analyzed them in textual form.

2.4.2 Analysis of textual material

The archival material related to the three cases of violence that have gained visibility in recent years was analyzed to get a general sense of how violence and subjects of violence were categorized as they gained recognition. I asked: what kinds of subjects and what kinds of violence were being created through this recognition? I did

Turning spoken words into text includes a process of fixing stories and experiences on the page, which are often then analyzed in qualitative research by coding or identifying thematic categories that arise within the now written words. While these categories can shift in textual analysis, an oral analytic methodology more closely follows Indigenous pedagogies in which meanings emerge through repeated listening, thus thematic categories are not formalized until later in the process. Thus, rather than writing the interviews down and then analyzing them, I developed a method that seemed more suitable for my Kwagiulth witnessing methodology, repeatedly listening to the interviews, formulating an analysis and then writing down my findings, drawing quotes from the interviews at the end.
not conduct an in-depth discourse analysis, but rather formed a general picture of the kinds of language, legal processes and levels of visibility that were produced.

2.5 Ethics of insider research on violence

It is important to mention the institutional and personal research ethics which frame this project. As I have outlined above, my own ethics emerge within a politics of witnessing which is rooted in a network of reciprocal relationships in which I am compelled to act. Within this ethical framework, I also understand my role to involve researching and speaking about something with an identified need emerging from within this network of responsibility. Thus, the research questions themselves and the approach I use to answer them are designed along these ethical lines. Additionally, the research subjects were chosen out of an ethical responsibility to do little harm, as I was attuned to the possibility of retraumatization when interviewing people about their direct experiences of violence. As such, I chose to interview people who already talk about violence in their work on a daily basis and who are publicly known for their work in this area. Research on violence sometimes unknowingly exposes people who are speaking about violence to backlash or further harm, which I sought to avoid by choosing not to seek victims of violence to interview – although some of the participants chose to share past experiences of abuse, this was not the basis on which they were invited to participate.

Prior to seeking approval from the Simon Fraser University (SFU) Research Ethics Board (REB), I asked a number of potential interview participants for their opinion on my research questions. Given my responsibilities to this network of colleagues, I sought to first gain their approval of my research plan before finalizing my questions and submitting my ethics to SFU. I chose this approach because of the sensitive nature of my research topic, which may not be appealing to all Indigenous leaders or organizations. Thus, I did not think it was necessary nor appropriate to seek approval from a formal First Nations organization such as the Assembly of First Nations or Union of BC Indian Chiefs. Additionally, as an Indigenous woman working on this issue, I find it insulting and demeaning to have to ask the federally approved predominantly male
leadership if I am allowed to do this research. Indeed, the gendered nature of political power relations in our communities is part of the dynamics of law and violence I seek to question.

The formal institutional ethics are also important to make note of. National efforts have unfolded in recent years to formalize ethical considerations for research in Indigenous communities in Canada, arising from the recognition that in many Indigenous communities, ‘research’ continues to be seen as ‘a dirty word’ (Smith 1999). As the 2010 *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* (TCPS 2) states:

Research involving Aboriginal peoples in Canada has been defined and carried out primarily by non-Aboriginal researchers. The approaches used have not generally reflected Aboriginal world views, and the research has not necessarily benefited Aboriginal peoples or communities. As a result, Aboriginal peoples continue to regard research, particularly research originating outside their communities, with a certain apprehension or mistrust. (105).

These national ethical guidelines are intended to be applied equally in all Canadian research involving humans at institutions receiving funding from Canada’s three federal research agencies. However, in my ethics application, I successfully argued that the TCPS 2 section on “Research Involving the First Nations, Inuit and Métis Peoples of Canada” should not apply to my project. As mentioned, these guidelines were developed within the historic and ongoing context of research in Indigenous communities being largely conducted by non-Indigenous scholars. As such, the ethics protocols assume that the researchers themselves are not members of the communities with whom the research is being conducted and do not contain ethical standards specific to Indigenous ‘insider’ researchers.

As an Indigenous researcher working with other Indigenous people to address a sensitive issue, I was concerned that the key words ‘violence’ and ‘Indigenous’ would trigger alarm bells that would mean my research would be deemed ‘high risk’. I anticipated this in my application and demonstrated the ways in which I was minimizing risk, despite the challenging topic of discussion. Here, I would like to share the section of my REB application in which I address the TCPS 2 policy on research with Indigenous
people as it demonstrates the ways in which Indigenous researchers like myself must
develop our own solutions to this gap in institutional ethics and the university’s response,
which is made on a case-by-case basis. Given the TCPS 2’s inability to account for the
ethical dilemmas of research conducted by Indigenous people in our own communities, I
include my application to illustrate the ways that institutional ethics and Indigenous
ethics are reconciled in my research methodology:

As stated in Chapter 9 of the TCPS2, the principles of respect for persons,
concern for welfare and justice must be followed in research involving Aboriginal
peoples. However, the TCPS2 provides few methods for addressing these principles in
research conducted by Aboriginal people themselves, as in the case of this project. The
guidelines in Chapter 9 are based on the reality that most research has not reflected
Aboriginal worldviews and has not been premised on reciprocity. Consequently, many of
the guidelines assume a gap between the researcher and Aboriginal community, and, as
such, will need to be adapted to fit the nature of this project. Since the researcher has
designed this project from her own Indigenous perspective, and in consultation with her
peers, it adheres to the TCPS2’s call to ensure Aboriginal peoples worldviews shape the
research they are involved in. Guidelines about respectful relationships, consultation,
and collaboration are addressed through the unique relationship between the
researcher, the area of study and the network of Indigenous professionals who will be
invited to participate.

TCPS2 guidelines suggest that ethical reviews remain attentive to the specific
context of the project and community involved. In this case, the ‘community’ is a
‘community of concern’ (TCPS2, 107) rather than a specific ‘territorial’ or ‘organizational’
community; respondents are Indigenous people with diverse backgrounds (status, non-
status, Métis, First Nations, Inuit, etc.) whose work is concerned with issues of law and
violence in BC.

The research is designed and led by an Indigenous person from within the
community of interest, and as such, engagement with the communities of interest (115)
is inherent to this research. Additionally, informal consultation has been conducted with
potential research participants, and their feedback has been incorporated into the
research design. Since the research is being conducted with a community of interest
across a broad geographic area involving Aboriginal individuals without a shared cultural or geographic community, the consent of individuals is sufficient to participate and a community engagement plan is not necessary nor appropriate (112). Aboriginal people “are free to consent and participate in research projects that they consider to be of personal or social benefit. If the project is unlikely to affect the welfare of the individuals’ communities, local community engagement is not required under this Policy” (113).

In part, this research involves critical inquiry (117) of public institutions and communities themselves, as it addresses systemic factors impacting violence in the lives of Aboriginal people. As such, it is important to recognize that diverse interests within communities (116) may cause some leaders to want to silence this kind of research. Indeed, issues of backlash, silencing and normalization of violence within Aboriginal communities will be explored. These provide additional reasons why individual consent is the most appropriate approach.

The mutual benefits (124) of this research are multiple, as it seeks to re-theorize Indigenous peoples relationship to law and violence, and will contribute not only to the future work of participants, but of all Aboriginal people seeking to address violence in diverse community contexts.

2.6 Profile of interview participants

Here, I offer a brief introduction to the eleven research participants, highlighting the ways in which they have addressed violence in their work. As discussed above (in section 2.3.1), I interviewed 11 people to enact a network of knowledge which is central to the operation of Indigenous law, and to bring forth the expertise held by Indigenous legal technicians within a pluralistic definition of law. None of the people who were invited to participate in an interview said no, however I sent invitations to several additional people who were either too busy or did not respond to my request. I recognized that I could have interviewed many more people, as within my pluralistic decentralized definition of law, ‘legal technicians’ are expanded to include people working in a diverse array of official and unofficial roles. However, I chose not to invite
more people to participate because after conducting the 11 interviews, I was not hearing any new information about realities of violence and Indigenous peoples’ relationships to Canadian law (see below for some limitations arising from this approach). Although each participant offered unique information about specific Indigenous community initiatives grounded in culturally-specific socio-legal practices, this research was not intended to provide an exhaustive account of these efforts. Interviewing a smaller number of people allowed me to honor each participant’s voice and story in this dissertation, along with my own, more so than if I had interviewed a larger number of people. These participants provide particularly valuable information about realities of law and violence in the lives of Indigenous people in BC, given that much of their work is off the official radar.

While all but one of the participants agreed to be named here, some of them chose for some aspects of their comments to be anonymized. As such, several participants who are named here will be quoted in the dissertation with a pseudonym or “participant” in place of their name.

Barb Ward-Burkitt has worked at the Prince George Native Friendship Center (PGNFC) for over 20 years, where she is currently the Executive Director. Barb is of Cree ancestry from the Fort McKay First Nations in northern Alberta but has lived in BC since she was a child. PGNFC offers centralized services for Indigenous people in Prince George, and although they offer targeted services that address violence, such as Victim Services, Barb says that violence is addressed in all of their programming.

Chaw-win-is a member of the Nuu-Chah-Nulth nation, where she initiated community marches to honor girls in communities across her territory. She was previously a member of the West Coast Warrior Society, holds an MA from the University of Victoria (UVic) and teaches at UVic and Camosun College. Recently Chaw-win-is organized a gathering for women from diverse coastal Indigenous communities, during which it was decided that they would create a declaration of rights from a coastal perspective.

Clarie Johnson is of Métis ancestry and has worked as a clinical counsellor at Surpassing Our Survival (SOS) Society in Prince George for 19 years. Clarie coordinates the program for children ages 3 to 13 who have disclosed being sexually
abused, have concerning sexual behaviors or who are at risk of being in contact with an alleged or known sex offender, including a high representation of First Nations children. Clarie predominantly works with clients from Prince George, but SOS also serves clients who travel in to town from outlying communities.

Freda Ens, a member of the Nisga’a nation, has worked as a Victim Services worker for many years, providing support to families whose loved ones were killed or went missing from Vancouver’s Downtown Eastside and other parts of the province. Her previous work has included working as the executive director for the Vancouver Police and Native Liaison Society. She currently works out of the provincial office in Vancouver.

“Helen”, who chose to remain anonymous, is a member of a BC First Nation and has worked for 20 years as a community educator on violence prevention and youth empowerment. She also works as an independent consultant on related issues, and has an MA in the field of counselling.

Katrina Harry is a member of the Secwepemc band and a lawyer with a background in Aboriginal law. She has been working in the area of child protection for the last three and a half years, as one of three Indigenous lawyers in BC working in this field. Katrina works directly with families who are facing custodial orders, representing them during the process of negotiating the ‘care’ of their children by the provincial government.

Linda Thomas is of Cree ancestry, but married into the Tk’emlups te Secwepemc community thirty years ago, where she continues to live and work. She has a varied background as a lawyer, including working in child protection, family law, and representing prisoners in jail. Her work on issues of violence also includes working as a social worker. Linda is currently initiating and overseeing the creation of an Indigenous court system in the Tk’emlups te Secwepemc community.

Lisa Krebs is an independent consultant working on issues of violence prevention, policy development and community planning in northern BC. She was previously the Highway of Tears coordinator out of Prince George, and has worked on a number of research and educational initiatives aimed at improving the capacity of communities to address violence. Lisa is of Métis ancestry.
Natalie Clark is a Métis social worker and clinical counsellor who has been working with young women and families in communities across BC for the past 20 years. She also spent a number of years at the Justice Institute of BC training front line staff on working with youth who have experienced trauma, and researching and developing best practice models for working with marginalized youth. Natalie is currently faculty in the department of social work at UBC. Her work has included developing and running girls groups as an intergenerational space for girls and women, particularly in small communities in the interior of BC.

Paul Lacerte has been the Provincial Executive Director of the BC Association of Aboriginal Friendship Centres for the past 17 years. He is a member of the Cariboo Clan and a citizen of the Carrier Nation in northern BC. Paul is the founder of the Moosehide Campaign, which was inspired by his responsibilities to his wife and children (he has four daughters and one son) to create a future with less violence. Though the Moosehide Campaign originated with Lacerte, it has been adapted in communities across BC, asking men and boys to wear a piece of moose hide as a promise that they will not be violent towards girls and women.

Shelley Cardinal has worked at the Red Cross for seventeen years as the National Aboriginal Consultant to RespectED: Violence and Abuse Prevention Program. She is also a driving force behind Walking the Prevention Circle, a program that focuses on prevention education for Indigenous communities. For five years, she worked exclusively within BC and since 2007 she has worked nationally, training other leaders across Canada. RespectED looks at root causes of violence and helps to create a common language of violence with adults and youth in Indigenous communities. Shelley is a member of the Bigstone Cree Nation in northern Alberta and is now based in Victoria.

2.7 Limitations of research

Having interviewed a network of Indigenous people working on violence in BC, the perspectives brought to bear in my primary research is limited to the firsthand
experiences they brought in conversation with my existing analysis. I chose not to include legal technicians working directly within systems of Canadian law, such as police officers, judges or probation officers, who would likely have provided quite different perspectives on legal responses to violence. Additionally, this research does not include interviews with non-Indigenous people so is limited in how it captures the impact of increased visibility of violence on the wider BC population. The gender representation in the interviews also limits my analysis, as I only interviewed one man and one two-spirit person. Additionally, this research does not claim to represent the perspectives of children and youth, as none were interviewed. As a project formed by someone intimately involved with issues of violence in Indigenous communities, and by a Kwagiulth scholar, this research is shaped by my emotional investment in the topic at hand. Given that I am so close to the issues I am discussing, I cannot claim to be neutral nor objective – central qualities of many forms of western knowledge production.
3. Law, Colonialism and Space

Canadian law is largely devoid of our views. It most often acts as if we are not even here—through the doctrines of discovery, Crown sovereignty and constitutional law. We need to at least find ways to attenuate that force. (Borrows 2010b, 142)

All the oppression of Aboriginal Peoples in Canada has operated with the assistance and the formal sanction of the law. The Canadian legal system is at the heart of what we must reject as Aboriginal nations and as Aboriginal individuals. (Monture-Angus 1995, 250)

Embedded in this research are questions about the limitations inherent in seeking recognition of Indigenous people as subjects of Canadian law. As Christie (2007) states, arguments for recognition “begin with the assumption that the state (or dominant society) is there, a given, and then imagine Indigenous peoples coming to the centre of power to try to argue (somehow) that they should have a place within the larger system. This approach begins with the notion that in some way the power structure of Canada is legitimate” (16). This analysis has been applied to efforts by Indigenous peoples’ land use rights, treaty negotiations and other broad discussion of rights, but has not yet been applied to the scale of bodily violence.

Categories of ‘Indians’ (and the contemporary equivalent, ‘Aboriginal’) and ‘Indian space’ have become naturalized in Canadian society and in much scholarship on Indigenous-government relations, and they continue to be enforced through a set of state-determined power relations, and histories of both physical and epistemic violence. This system of categorization is foundationally gendered, as the rights and socio-legal standing of ‘Indians’ have always been delineated along gender lines, resulting in distinct experiences of violence for ‘Indian’ men, women and two-spirit people. I argue the perpetuation of this categorization serves to affirm the closure of settlement, and reinforce Indigenous peoples’ status as colonized subjects: dependent, victimized and
incapable of progress, a product of spaces which are inherently violent, impoverished and marginalized. We see these categories at work when we talk about native people 'migrating' from reserves (Indian space) to cities (non-Indian space). This framing undermines claims of Indigenous people in BC to anything more than those “points of attachment” (Harris 2008, 5) within their traditional territories that together cover all of BC.

This section is intended to provide a foundation from which to understand the role of law in shaping day-to-day reality in Indigenous communities and the potential to address violence through legal means. I hope to show how law structures the categories in which Indigenous people are situated in relation to socio-legal norms and in the criminal justice system. I situate my exploration of violence within the colonial history of BC’s legal geographies in order to argue that the issue of interpersonal violence should be addressed as an integral part of asserting Indigenous self-determination. To do so, we must begin with understanding the primary spatial and embodied categories of colonialism: ‘Indians’ and reserves. Together with other categories embedded within foundational discourses of colonialism, such as categories of gender, these form the basis on which Indigenous-government relations are negotiated and shape the possibilities for recognition of Indigenous people as legal subjects. I hope to show how colonial categories and their spatialization entail the erasure of Indigenous subjectivities and territories, making it difficult for Indigenous people to be seen as anything other than colonial subjects within their subjectivity as ‘Indians’. I will argue that this erasure might be understood as the spatialization of the violence of law itself.

In this section, I first discuss the creation of Indian reserves within the settlement process of BC, and the legal measures through which Indigenous peoples became ‘Indians’ across this settler geography. Second, I trace the ways that western legal thought was used to create ‘Indians’ as colonial subjects who were void of their own legal order, which preceded the creation of reserves. This history is useful in understanding how settlers imagined themselves and justified the violent acts which settlement entailed. It also illustrates how the violent erasure of Indigenous self-determination and Indigenous geographies was naturalized. Third, I suggest that in the ideological shift from terra nullius geography to the settler society ‘Indians’ became imagined as subjects of the reserve, a mobile status that travels with Indigenous people
across diverse spaces within Canada. I suggest the logics of *terra nullius*, the frontier and the reserve are activated within Canada’s colonialscape, a concept which is helpful in understanding the spatial rationales through which colonial relations are continually remade. Finally I discuss the manifestation of colonialscape logics in the treatment of violence toward Indigenous people across reserve and non-reserve spaces. This history provides an important foundation for understanding the colonial logics embedded in everyday socio-legal relations in Canada which make it difficult to recognize Indigenous legal orders as a possible venue for addressing violence and for reasserting Indigenous peoples’ agency.

### 3.1 Creating reserves: material reality

Colonialism in a place like British Columbia is not so much a set of tactics that others employed at some time in the past as an ongoing set of relationships based on the fact that newcomers established themselves here, and refashioned a strange place, making it their own. (Harris 1997, xvii)

As Cole Harris (2002) has shown, Canadian Indian reserves can be understood as a manifestation of colonial ideologies, produced in order to realize the ongoing dispossession of Indigenous peoples of their territories and to establish the sovereignty of the Canadian state. Yet the creation of BC entailed not only the mental work of imagining ‘Indians’ as without legal tenure, but also the practical work of individuals mapping out and dividing up land, confining ‘Indians’ onto reserves through force: “violence was not only an *outcome* of law, but its *realization*” (Blomley 2003, 129, emphasis in original). Reserves in BC came into being through a land policy with a mandate “to grant miniscule reserves and ignore title” (Harris 2008, 437). Through this process, native people became trespassers in their own territories, at the same time as
becoming subjects of the federal *Indian Act* as status Indians\(^8\). As Doug Harris (2008) notes in his account of reserves and fisheries in BC, reserves became points of attachment within native people’s traditional territories, but little more. Reserves were, and are, part of territorial strategies to empty space of Indigenous tenure, yet in BC the lack of consensus around the legal issue of title is evident in the lengthy and messy treaty process that is still ongoing. “The arbitrary boundaries created by the Indian Act cookie cutter, which divided aboriginal peoples into bands, cut across the aboriginal legal orders” (Napoleon 2009, 384). Although the reserve geography of BC is often taken as fixed or natural spaces of Indigenous occupation, the history of reserve development in the province reveals that their construction and realization was anything but neutral.

In the mid-nineteenth century, British interest in what is now known as British Columbia changed from trading country to settlement frontier, marking the beginnings of a fundamental transition in relations with Native peoples (Harris 2008). Beginning with the creation of the Colony of Vancouver Island in 1849, processes of dividing land into reserves and that for settlers, continued in tandem for 75 years. In 1924, the Dominion and provincial government agreed on what they regarded as the final reserve geography of BC (Harris 2008). With few exceptions the need to seek agreement with Native peoples over the shared use of space was ignored. Instead, during this time of early settlement, “a carefully choreographed display of violence” (Harris 2002, 22) was used to keep Indigenous people in their place – that is, out of the places that white settlers had deemed to be desirable for themselves. The BC government was the only provincial government in Canada that would not acknowledge Indigenous peoples’ right to negotiate the use of land, thus the lack of treaties and late creation of reserves in the province. Here, the Crown did not negotiate transfer of rights to land or governance, but “merely asserted such rights, and acted as if their unilateral declarations have (sic) legal

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\(^8\) Not all Indigenous people were granted Indian status, as status was determined by a set of state-imposed regulations based on gender, marital status, education level and other factors. Additionally, Métis people and Inuit people were categorized differently than other Indigenous groups or First Nations in Canada. For more on Indian status in Canada, see Bonita Lawrence, 2003, *Gender, Race, and the Regulation of Native Identity in Canada and the United States: an overview*, *Hypatia* 18(2), 3-31 and Royal Commission on Aboriginal Peoples. 1996. *Part Two: False Assumptions and a Failed Relationship*. Ottawa: Government of Canada.
meaning” (Borrows 2002, 113). BC reserves were created only when white settlers were increasingly encroaching on the land and had interest in capitalizing on the land and natural resources (Miller 2009). Thus, the Fraser Valley and Vancouver Island reserves were established first and other areas were plotted out later.

Reserves were seen as a temporary measure, meant to be self-sustained through access to fisheries while Indigenous people became part of the wage economy, thus, “the land policy was built around access to the fisheries” (Harris 2008, 39). The power dynamics which shaped the creation of reserves in BC centered around the tension between provincial and federal fights for control, and the shared desire of both governments to establish a prosperous, powerful settler society (Harris 2002). The rights of ‘Indians’ were formed within these overlapping and often competing jurisdictions related to federal and provincial governance, as well as the administration of reserves themselves within a federally defined band system.

The settlement of BC, as with colonialism the world over, was premised on, and facilitated through, a process of creating spaces which were orderly, easily commodified and clearly defined through the imposition of Western socio-legal property regimes. These regimes were enacted through tools of the western geographic imaginary, including the frontier, the survey and the grid (Blomley 2003), which served to neutralize the violence inherent in property’s realization. As stated by Mitchell (2002) in his account of colonial Egypt, “The colonial presentation of law as a conceptual structure brought from abroad performs the silencing of the actuality out of which property is made. But it is not just the colonial legal texts that produce this difference. The very act of colonial occupation produces it” (77). In BC, reserves became compartments to which Indigenous people could easily be relegated in order to clear up the rest of the land for settlers to develop (Harris 2002). This process depended upon well-established traditions of positioning the category of ‘Indian’ or savage opposite that of English settler subject. Settlers acting on behalf of the Crown or the colony “took European civilization, Native savagery, the superiority of colonial power, and the sovereign rights of colonizers to colonial land completely for granted” (Harris 2002, 6). Through this process, new geopolitical spaces—those of firmly demarcated reserves, towns, and spaces of resource extraction and production—were superimposed onto the former territories of Indigenous peoples, and their boundaries closely monitored and policed. Colonial power
operated in favor of settlers and the expansion of capitalist ideologies of empire, and law was used to construct, enforce and normalize power relations literally on the ground through separating ‘Indian’ spaces from settler spaces. Thus as materializations of the violent power of law, arbitrary boundaries became legal realities (Harris 2002, 271).

Indeed, the establishment of lawful spaces, and unlawful spaces, were central to the frontier landscape in which reserves emerged. In Blomley’s (2003) analysis of the role the western geographic imaginary played in colonial violence, the frontier, the survey and the grid are exposed as central to processes of settlement. Blomley explains that the boundaries created around that which is deemed law vs. the violent world of nonlaw entails the inscription of “a frontier—which may be figurative, temporal and spatial” (124, emphasis in original). An imagined frontier was integral to implementing a regime of private property within the sovereign territory of Canada, and the simultaneous implementation of a regime of Indian reserves. This imagined frontier is also temporally bound, as Indigenous land tenure exists prior to its establishment, consisting of nomadic, temporary or otherwise uncertain claims to the land. Thus, the imagined frontier which brought delineated reserves for ‘Indians’ and western property regimes for settlers is made possible by imagining its spatio-temporal edges against which Indigenous claims exist. The frontier makes property and reserves necessary to bring order and lawfulness to the land, rendering violence to the space beyond the space and time of the frontier, or under the control of the frontier’s logics. “Western notions of property are deeply invested in a colonial geography, a white mythology in which the racialized figure of the savage plays a central role” (Blomley 2003, 124).

However, despite the obvious racism underpinning the settler view through which reserves came to be formed, the history of BC is told in a particular way in order to minimize the violence and lawlessness inherent in its creation. Harris (1997) argues that smallpox is downplayed in historical accounts of BC’s creation because this history threatens the narrative that European contact meant progress and improvement for the savages. The logics underpinning the reception of law in Canada can be traced to its roots in *terra nullius* and the doctrine of discovery, which naturalizes the categorization of Indigenous people as ‘Indians’ incapable of formulating their own law, thus hiding the violence inherent in their displacement.
The *Indian Act* of 1876 was another strategy to facilitate colonial expansion, providing a national legal foundation based on the assumption that Indigenous people were inferior to Europeans. A report of the Department of the Interior of the same year expressed this paternalistic and assimilationist philosophy that ‘Indians’ were to be treated as “children of the state” (Comack 2012, 70). This legal framework was established during a time when the goal was to assimilate ‘Indians’, to ‘civilize’ them, in order to eventually rid Canada of ‘Indians’ altogether. The dehumanizing inscription of ‘Indians’ as colonial subjects of Canada is evident in the lasting ways ‘Indians’ were given restricted legal rights and status. The *Indian Act* created categorizations and sub-categorizations of ‘Indians’, in a highly gendered system of stratification determined by the federal government. Replacing Indigenous peoples’ existing systems of diverse identifications emerging within place-specific cultural worldviews, the *Indian Act* established one unitary way of defining who was and who was not an ‘Indian’ male and female within the cultural worldview of European settlers. Indigenous nations each had systems of gender and cultural identity enacted within their distinct worldviews – including non-binary gender roles that are now called ‘Two-Spirit’. All ‘Indians’ were made to ascribe to this imposed system in order to count as legal subjects. The price of not counting was not having access to the rights and resources provided through the *Indian Act*, such as on-reserve housing, dental and health care, and education (minimal as these provisions might be).

Within this gendered system, Indian status was granted to ‘Indian’ men, women married to ‘Indian’ men and children of those men, thereby instituting a patrilineal definition of Indian status. Until 1985, non-Indigenous women gained status when they married status Indian men while Indian women lost status when marrying non-status men. My mother, who married my father in the mid-1970’s has Indian status to this day despite the fact that she is not Indigenous and she divorced my dad over 30 years ago. The establishment of a patriarchal system of power and leadership was also introduced and enforced through the *Indian Act*, as only men could run for chief and council and only men could vote in band elections until 1951. Additionally, ‘Indians’ were denied the right to vote in provincial or federal elections until 1949 in British Columbia provincial elections, and 1960 in federal elections.
The Canadian Criminal Code was also used to create laws which were specific to ‘Indians’. For example, a number of status offences applied only to Indigenous people, including the 1884 ban of the potlatch and the tamanawas (a healing ceremony), as well as the 1885 ban of the sundance (Comack 2012). In these examples, the laws of colonial Canada can be seen as rooted in Christian doctrine, as Indigenous spiritual and cultural practices that were seen as preventing conversion were simply made illegal.

The establishment of a new stratified system of colonial power relations required the actions of individuals to make these laws real through bringing meaning to emergent categorizations of ‘Indians’ and reserves. Indian agents and the North West Mounted Police (NWMP) were responsible for enforcing the word of colonial law, including the Criminal Code and Indian Act. Indian agents could in fact conduct trials anywhere in Canada (including off reserve) for Indian Act violations and some Criminal Code violations. Thus, Indian agents could ask police to prosecute Indians and then the agents themselves sat in judgment of those cases (Comack 2012). These legal technicians were integral to the civilizing mission of Canadian law, ensuring Indigenous peoples’ submission to colonial rule (Comack 2012, 74). Armed with the violent technologies of law enforcement – a gun and a badge to go with it – police and Indian agents served to keep ‘Indians’, as colonial subjects, in line with settler priorities. The legal systems of Indigenous people themselves were effectively mapped over, although they remained (and continue to remain) alive and active through diverse strategies of resistance. One such strategy of cultural survival was to go underground and be unrecognizable to agents of colonial law. In one well known example from my own community, potlatches continued to be practiced out of sight, such as by wrapping gifts in Christmas paper in order to mask their real purpose.

In summary, the province of British Columbia and the country of Canada used both ideologies of European superiority and the actions of individual legal technicians on the ground to cement the new colonial vision of BC. Creating social relations in which these power relations were naturalized and seen as necessary for progress, law itself carries the mythical power to enforce its own vision as truth. Canadian law bulldozed over pre-existing Indigenous geographies, yet Indigenous jurisdiction was never ceded. Rather, Canadian legal representations of space came to be given certain performative power through the violence of law, where Indigenous spatial representations continued
to be lived upon the land but were not successfully performative. In other words, while Indigenous people’s socio-legal practices of living their obligations and relations within their traditional territories continues to this day, the spatial relations they produce remain unrecognized within dominant operations of power.

Thus, as I have outlined, law was not only used to empower and enforce colonial worldviews but was in fact constitutive of colonial ideologies, categories, and spatial imaginings. The existence and nature of law itself, as a civilizing system, was at the heart of colonial subjectivities which set colonists apart from Indigenous people and turned them into ‘Indian’ men and ‘Indian’ women, gendered and racialized subjects of colonial rule. Indigenous people were constructed as a racial group incapable of having systems of law, because Indigenous legal systems were not recognizable as law to settlers. As I will explore in the next section, conceiving of ‘law’ in terms which did not include Indigenous law allowed for the lands of Canada to be conceived as empty in the doctrine of *terra nullius*. Indigenous people essentially disappeared in the process, as their lands were envisioned as void of legitimate legal subjects. As ‘Indians’, Indigenous people became residents of spaces which were legally delineated as reserves, though any place where they lived within Canada were subject to federally defined categories, and could thus be imagined as ‘Indian’ or ‘reserved’ space to justify government intervention. Further, this imaginary served to render invisible Indigenous territorialities and to neutralize their threat to Canadian sovereignty. As I will show, this fundamental differentiation between Indigenous law (or lack thereof) and Western law, and the subsequent categorization of Indigenous people as ‘Indians’ under Canadian rule, is still foundational to socio-legal relations in BC today.

### 3.2 Empty land and the doctrine of discovery

Simply put, the law creates reality that is real because it has been created by the law. (Culhane 1998, 65)

As I have discussed, reserves and ‘Indians’ are legal and social categories which are ontologically linked, and inherently co-constitutive in their definition and regulation
through the federal *Indian Act* and their everyday use by Canadians. Embedded in these concepts are racist ideologies which justified and legitimated colonialism in the first place, positioning Indigenous people as inferior to Europeans. The myth of European discovery of Canada embedded in Canadian law perpetuates the myth of inferiority of Indigenous peoples (Borrows 2010), categorizing ‘Indians’ as incapable of governing themselves and incapable of formulating law. This categorization of ‘Indians’ as the racialized subjects of European settlers was integral to the formation of reserves. As Cole Harris (2008) writes, “Had Natives been treated as people, rather than as Indians, there would not have been reserves” (157).

Indigenous peoples’ relationships to the Canadian state have been shaped by the imposition of a Canadian legal system which has rendered Indigenous legal practices all but invisible. "In Canada, the law has often layered itself over pre-existing Indigenous legal landscapes, concealing this previous existence” (Borrows 2010, 68). The Canadian legal system has been used to entrench colonial power relations between Indigenous peoples and the Canadian government, and has shaped all aspects of Indigenous peoples lives. So while Canadians largely take for granted the neutrality of Canadian law and governance, Indigenous people’s experiences reflect the culturally-specific, power-laden nature of law. Discourses about ‘Indians’ embedded in Western legal discourse can be understood as legitimizing, energizing and constraining roles of power in the violent conquest of ‘The New World’ (Williams 1990). In order to imagine the lands of Turtle Island, and other parts of the world, as available for settlement, they needed to first be cleared of any legal ‘owners’. Religious and racial ideologies were utilized in creating ideas of European Christians as fundamentally different from Indigenous peoples, who were imagined as unable to formulate their own legal orders. Through this racial categorization of non-Europeans, meaningful legal status was denied to Indigenous people because ‘heathens’ and ‘pagans’ were seen as lacking the rational capacity to exercise equal rights under the West’s medievally derived law. In this way, the category of Indian ‘other’ was formulated in opposition to that of civilized, Christian European settlers. Conquest of their lands was constructed as morally just because it was done in the name of God. It was also seen as being carried out for the ‘heathens’ own good, because they were in need of being converted to Christianity.
The legal codification of these racial categorizations can be traced back to the decrees of Popes that allowed Christians to use “a vanquishing violence” (Francher 2010, 9) to claim lands belonging to non-Christians in perpetuity within a framework of dominance. The 15th century law of Christendom stated that discovery gave title to assume sovereignty over, and to govern, lands of Africa, Asia, and North and South America. This principle, now known as the doctrine of discovery, has been recognized as a part of international law for nearly four centuries and is integrated into political and judicial texts the world over.

Empire’s rule of law thus begins with the doctrine of discovery and its discourse of conquest, which naturalizes the concept of terra nullius, or empty lands, while denying fundamental human rights and self-determination to Indigenous peoples (Williams 1990, 325). Together, these ideas created the mythology around which the Canadian legal order was founded:

Within this ideology, human beings can be considered, legally, not to exist, and can be treated accordingly. At this most fundamental, common sense level, a study of British and Canadian law in relation to Aboriginal title and rights therefore begins not ‘on the ground,’ in concrete observations about different peoples’ diverse ways of life, but rather ‘in the air,’ in abstract, imagined theory. Hovering, like the sovereign, who embodies this abstraction, over the land. (Culhane 1998, 49)

The racially based doctrine of discovery is not only at the heart of justifications for the theft of Indigenous territories, but fundamentally denying Indigenous peoples’ humanity. Institutionalization and depoliticization of the doctrine of discovery lies at the root of violations of Indigenous peoples’ human rights, both individual and collective (Francher 2010). The United Nations Permanent Forum on Indigenous Issues calls this holistic structure the Framework of Dominance (Francher 2010), claiming it is responsible for centuries of dispossession and impoverishment of Indigenous peoples.

Originating in legal rationales of the middle ages, this mythology has been encoded in Canadian law as well as nationalist stories about Canada’s legal foundations. In colonial societies, law is presented as “the opposite of violence, exception, arbitrariness, and injustice, yet somehow these features [are] all incorporated within it” (Mitchell 2002, 77-8). This presentation of law and legal actors as non-violent
arbiters of justice is evident in the narratives told in history books, in which the NWMP are portrayed as aiding natives, bringing law and order to the West (Comack 2012). These stories comprise the foundational Canadian national mythologies, which are naturalized in the concept of *terra nullius* in which the lands of Canada were empty of civilization before settlers arrived here and brought the rule of law with them.

Yet, as Indigenous peoples, legal scholars and others have argued, by imposing a system of governance within the European tradition, Canada has subjugated Indigenous rights to Canadian values, imposing a culturally-specific form of governance on Indigenous peoples (Alfred 2001). Consequently, material realities of colonialism are extensions of a racist discourse of conquest that at its core regards Indigenous peoples as normatively deficient and culturally, politically, and morally inferior (Williams 1990, 326). Moreover, legal categorization of ‘Indians’ has underpinned Canadian policies which seek to assimilate Indigenous people into Canadian society ‘for their own good’ while stripping them of their political and individual agency. As Williams (1990) writes, “Animated by a central orienting vision of its own universalized, hierarchical, position among all other discourses, the West’s archaic, medievally derived legal discourse respecting the American Indian is ultimately genocidal in both its practice and its intent” (326). Principles generated by this discourse of conquest continue to be used to deny Indigenous nations the ability to govern themselves according to their own vision. By categorizing Indigenous legal practices as ‘cultural beliefs’ and Canadian law as ‘truth’, Indigenous peoples continue to be legally constituted within these foundational ideologies emerging from the doctrine of discovery (Monture-Angus 1999, Culhane 1998).

Through tracing this history of legal rationale and its integration into policies governing the lives of status Indians, it becomes abundantly clear that law is not neutral but is itself violent in a multitude of ways. And law is violent in specific ways in colonial relations. The violence of law is concealed through ideological and material processes of naturalizing unequal rights for ‘Indian’ men and ‘Indian women, and reinforcing the categorization of ‘Indians’ as ‘other’. Williams (1990) argues that “law, regarded by the West as its most respected and cherished instrument of civilization, was also the West’s most vital and effective instrument of empire during its genocidal conquest and colonization of the non-Western peoples of the New World, the American Indians” (6).
3.3 Emergence of the colonialscape

Having traced the history and ideological work of *terra nullius* and its codification in Canadian law, as well as the materialization of colonial legal geographies in the creation of Indian reserves in BC, it is useful to now ask what ideological shifts happened in the movement from imagining Canada as *terra nullius* to materializing reserve and non-reserve spaces. ‘Indians’ went from being constructed as heathens in an empty, lawless land to subjects of federal law in a settler society which relegated ‘Indians’ to Indian reserves. What kind of ideological work was accomplished in this move from imagined empty land to imagined reserve and settler spaces? How did the categorization of ‘Indians’ shift? How did the gendered nature of these colonial categorizations impact Indigenous men and women differently? I argue below that ‘Indians’ are now imagined as subjects of the reserve, carrying this mobile spatial status with them regardless of where they travel within Canadian borders. This is accomplished within the federal reach of the *Indian Act* and *Criminal Code*, as well as the acceptance of Canadian law itself as the supreme law of the land, as ‘Indians’ are continually at risk of being transported to the reserve through justice wormholes (Osofsky 2008) in which their rights can be denied. I draw on the concept of landscape here, and its recent adaptation to describe ‘securityscapes’, in developing the concept of ‘colonialscape’ through which we might understand the interrelated spatial rationales of *terra nullius*, the frontier and reserves.

There are several approaches one might take to make sense of the relationship between imagined Indian space and its materialization in the everyday lives of Indigenous people as subjects of these spaces. Building on Harris’s (2008) argument that Indian reserves would not have existed had ‘Indians’ been seen as human, I would argue that Indian reserve geographies have since produced a different kind of imagined ‘Indian’ subject emerging through the realization of the reserve itself. As such, there are multiple imaginaries at work, capable of producing ‘Indians’ as colonial subjects within nested legal rationales which underpin BC’s geopolitical relations. Reserve geographies are produced within the rationale of *terra nullius*, and in relation to the imagined frontier, which are all at work under the spatialization of contemporary socio-legal relations. I find this examination of imagined and material geographies useful in understanding the
normalization of violence, as we can see how reserves are produced as spaces of assumed violence, while ‘Indians’, inherently ‘of the reserve’, are produced as subjects of this naturalized violence. ‘Indians’ can thus be understood as ‘reserved subjects’, as their spatio-legal subjectivity travels with them anywhere within the boundaries of Canada. The reserve, in essence, can be imagined and produced anywhere within national borders – anywhere naturalized as ‘Canada’ through the doctrine of discovery. This argument rests on the assumption that ‘Indian’ is not a static legal category, but is constantly made and remade through spatially and temporally specific socio-legal relations. Thus, a spatial analysis helps us to see how ‘Indians’ are not merely subjects of the federal Indian Act, but are produced within the realization and naturalization of reserves as both material and imagined “Indian space’ to which ‘Indians’ can be transported throughout all of Canada.

In understanding how reserves function within the colonial imagination, I find the concept of landscape to be useful. A central theme of cultural geography, landscape has been taken up and defined in various ways over the past several decades. Exploring the productive tensions within studies of landscape, Wylie (2007) recounts that the cultural turn in human geography in the mid 1980s-1990s saw landscape being defined “less as an external, physical object, or as a mixture of ‘natural’ and ‘cultural’ elements, and more as a particular, culturally specific way of seeing or representing the world” (13). Representations of landscape—of a particular physical space and its cultural overlay — may be understood as expressions of cultural, political and economic power which are central to local and national identities.

In Lie of the Land, Mitchell (1996) explores the connection between the material production of the California landscape and the production of landscape representations, through tracing the reproduction of industrialized agricultural workers’ labor. Mitchell explains that the connection between their work and the imaginary through which this work and its products become knowable comprise the making of the California landscape. Mitchell goes on to describe the ways in which ‘landscape’, like ‘culture’, ‘nature’ and ‘nation’, become integral to naturalized discourses which underwrite the legitimacy of dominant relations of power: “the more the word landscape is used, the greater its ambiguity. And the greater its ambiguity, the better it functions to naturalize power” (2). I would like to suggest here that in the context of settler societies like Canada
and the USA, these relations of power being naturalized are explicitly colonial in nature. Mitchell examines landscape as both a material thing and a representation of that thing to understand relations of labor in California in which the marginalization and resistance of agricultural workers is rendered invisible. Here, I similarly examine colonialscape as both the embodied, material conditions of violence in Indigenous peoples lives and the representations through which this violence becomes knowable, and thus naturalized as integral to the maintenance of the nation.

Colonialscape, then, might be understood as representations of the space now called ‘Canada’, which perpetuate and manifest particular (colonial) expressions of power. Such representations take not only visual forms (such as maps, paintings or photographs of ‘Indians’) but also textual (legal) forms within which western ontologies of space, race, gender and power are embedded. Just as landscapes appear to create a complete view of a particular space, colonialscape create the appearance that a colonial spatio-legal perspective of ‘Canada’ is somehow ‘true’. Colonialscape thus cover over other spatial relations and representations, as the colonial view blankets over these prior and deeper spatial orders. The concepts of terra nullius, the frontier and Indian reserves (and their outside, non-reserve spaces, cities, and so on) are culturally rooted ideas which together form a colonial way of seeing the Canadian landscape. As representations of the colonialscape, Indian reserves reinforce the underlying power relations which naturalize settlement, and hide Indigenous ways of living in relation to the land in ontologically distinct understandings of space. Further, the spatial representations which make up the colonialscape have been given material significance through legal and social enforcement. In this research, then, when I talk about colonialscape logics, I am speaking of the underlying categorizations and representations of terra nullius, ‘Indians’, Indian reserves, the frontier and so on, which together form a coherent logic which naturalizes colonial power relations. Importantly, I am also speaking of the spaces of settlement which form their outside: the city, civility, spaces of progress and resource extraction are all naturalized through the colonialscape as that which is not Indigenous.

In the colonialscape, reserves become the natural space of ‘Indians’, as Indigenous territorialities are rendered an impossibility in order to facilitate the reception of Canadian sovereignty. Indian reserves were first imagined as a space in which to
contain ‘Indians’ and to neutralize their potential claims to the lands of North America by enrolling them as subjects defined through the jurisdiction of the Canadian state. The category ‘Indian’ is spatialized in the form of Indian reserves, which were first imagined and then materialized by technicians of Canadian law, expressed in legal text, and realized in the form of physical force and control. However, today, Indigenous people are no longer contained, by force or by choice, to Indian reserves. I contend here that the ‘problem’ of Indigenous territorialities continues to be erased or neutralized within the colonialscape by imagining ‘Indians’ as residents of reserve spaces no matter where they travel. In the discussion that follows, I will show how ‘Indians’ are transported “to a different spatio-temporal configuration” (Osofsky 2008, 118) through justice wormholes to spaces where violence is expected and naturalized, in situations of interpersonal violence. The violence of law is spatialized through colonialscape logics to transport ‘Indians’ to a space in which justice is hard to come by.

As this research will show, Indigenous people are turned into ‘Indians’ and residents of ‘Indian space’ not only through the Indian Act or Canadian Constitution, but through the everyday actions and logics of networks of Canadian legal technicians. These spatial logics are not only racialized but are also gendered, as ideas about the proper place of ‘Indian’ women underpin the type of targeted sexualized violence experienced by Indigenous girls and women, as well as responses to this violence by officials of Canadian law. These actions are further normalized through socio-legal discourses which emerge from, and sustain, the colonialscape. In her study of the role of ‘Indianness’ in the transit of US imperial history, Chickasaw scholar Jodi A. Byrd (2011) argues that “Indianness can be felt and intuited as a presence, and yet apprehending it as a process is difficult, if not impossible, precisely because Indianness has served as the field through which structures have always already been produced” (xviii). It is not the reserve that is ubiquitous, then, but the colonial imaginary, which is based on Indigenous erasure.

The processes and logics underpinning colonial socio-legal relations are depoliticized through dominant ways of seeing the nation of Canada. The realization of the grid, explicitly a regime of property (Blomley 2003, Delaney 1997), entailed the violent displacement of Indigenous peoples in order to physically empty the land upon which the grid could be materialized. Not only were Indigenous people themselves
displaced in the process, but by imagining the lands through the grid, Indigenous peoples cultural, political and legal systems of meaning were rendered invisible or inconsequential. Rather than speaking of a bend in the river as connected to a particular ancestor or story, that place where land meets water became merely one part of the larger whole of Canadian lands opened up for ownership, exploration and settlement. However, within the a-historical, depoliticized colonialscape, the fractured geography of Indian reserves is neutralized, and their historical socio-legal construction within processes of colonialism is rendered invisible. This spatial imaginary can be put to work at any given time in order to produce colonial relations in which settler society can prosper. Various kinds of violence are naturalized and rendered invisible through this colonial ordering of space. Resting on a naturalized imaginary in which 'Indians' are subjects of reserves, and on a legal framework through which 'Indians' are subject to the Indian Act anywhere in Canada’s borders, the reserve is always an emergent possibility. Anywhere and everywhere is terra nullius, as the empty lands imaginary can be seen as underpinning natural resource acquisition throughout northern BC, as pipeline routes, fracking, and other extraction are shown to be occurring on unused or uninhabited lands. Indigenous resistance to this development has made visible the ways that the lands are actually in use and are inhabited by Indigenous nations, although it may fail to 'matter' within legal processes.

Within colonialscape logics, as the violence of displacement is rendered invisible, violence against Indigenous women is also made to be invisible in their gendered and racial construction as reserved subjects. Together the colonialscape works dynamically to produce 'Indians' as subjects of spaces which they fail to fully occupy, claim, or govern: their lands, their homes, and their bodies. For example, the violence of tearing children from their families and homes is seen as necessary, as 'Indians' themselves are constructed as incapable of caring for their own children. The violence of taking children to residential school is justified in this same way, through a rhetoric of care within an imagined colonial view.

As scholars have argued of the Downtown Eastside of Vancouver, the logics of the reserve and the frontier are used to naturalize widespread neglect, as well as processes of gentrification. Colonial BC was described in the same ways the Downtown Eastside is today, as empty and ready for development: “the characterization of life in
the Downtown Eastside as ‘degenerate’ and as ‘waste’ is an old frontier trick remade for a contemporary moment (Dean 2010, 123). Gentrification might be understood as a new word for conquest, as it uses a similar discourse to claim jurisdiction over Indigenous territories in the name of progress. In representing the Downtown Eastside as the frontier, Indigenous people, sex workers and other residents fail to adequately claim or occupy this space.

On the other hand, law can be used to create spaces where violence by Indigenous people is made hyper-visible, as “law constructs boundaries between legitimate and illegitimate violence and produces sociospatial zones in which violence is tolerated” (Sanchez 1997, 547). Blomley (2003) explains “Gendered violence is also understood legally in relation to the grid, with the law differentiating violence against women to the extent that it is coded public or private” (132). Lisa Sanchez’s (1997) analysis of spaces of the sex trade recognizes that violence needs a space and the law provides for it by creating spaces where violence has no witness. Reserves are also such spaces. And yet colonial law can be used within any space – urban, rural, reserve, non-reserve – to create a space where violence against Indigenous people has no witness. I suggest this is not only because reserves are physically and socially isolated from mainstream Canadian society, but also because Canadian legal actors are unable to ‘witness’ this violence due to the inability to recognize violence against Indigenous people, given their primary socio-legal construction as ‘Indians’.

Thus, although I agree with many aspects of Razack’s (2000) analysis of how the murder of Pamela George was handled in the courts, my analysis differs in significant ways. Razack claims that as an Indigenous sex worker, Pamela George was “considered to belong to a space to which violence routinely occurs, and to have a body that is routinely violated” (93). Although Razack calls for Pamela George’s location in this space to be connected to colonial dispossessions, I would argue that Pamela George’s murder would have been naturalized in any space within Canada, not only the inner city spaces of prostitution. If Pamela was murdered in her home, would she have a better chance of justice? If she was found on the side of a remote highway or on a college campus, would she, as an Indigenous woman, have found ‘justice’ within Canadian law? I would argue, no. Given the prevalence of violence against Indigenous women – children, adults, students, elders, sex workers, homeless, transient, and
professionals—there are no spaces within Canada where violence against us is rendered problematic. Yet it is useful to understand the specific spatial and legal mechanisms through which this violence is naturalized through transporting ‘Indians’ through justice wormholes, as various jurisdictional mechanisms and individual legal technicians work together to continually constitute Indigenous people as unworthy of justice across diverse settings. Such are the manifestations of colonialscape logics in ongoing settler colonialism. Although ‘spaces of prostitution’ are indeed constructed as zones in which violence against women is justified through the stigma against sex work, the whole of Canada is rendered as a zone in which violence against Indigenous people is justified, and indeed, necessary. It is not enough to see these as connected, but we must see these spatialized legal relations as interrelated such that the violence against sex workers and the violence against all Indigenous people stems from the same socio-legal relations: simply, our dehumanization.

Thus, being made a subject of ‘the reserve’, emerging within the logics of the frontier, means that you are produced as a specific kind of legal subject – an ‘Indian’, against whom violence is naturalized. These logics can be mobilized to justify violence in the Downtown Eastside as easily as in a remote highway or logging road in northern BC. Reserved subjects are of a time and place in which police negligence or excessive force is routine. ‘Indians’ do not have the capacity to make decisions for themselves, and, as failed legal subjects, are not reliable witnesses. Investigations into violence against Indigenous women can be seen as produced through the spatial relations of the reserve. Any space, not only the Downtown Eastside, can become a space of exception. Reserves are spaces of exception and anywhere can become the reserve. In court cases, this can be seen at work when the validity of testimony made by young women is called in to question. Indeed, this is a reason why many cases fail to get to court in the first place. It is up to police to gather evidence, and then Crown Counsel decides whether or not there is enough evidence to press charges. In my work on violence over the years, I repeatedly heard that cases did not get to court because young women or boys were said to be unreliable witnesses that would not stand up to cross examination. Maybe they were drinking or they have a history of sexual abuse which will be triggered and cause them to cry under questioning. Maybe their mother is a drug addict and none of the family can be seen as credible. Maybe that young woman is known to police for
working on the streets herself or has been in trouble with the law. Or maybe they are just plain ‘Indian’, and ‘Indians’ cannot be trusted.

In logics of the colonialscape, the naturalization of violence on reserves entails a certain kind of temporal warping, as reserves are always stuck in the past, beyond the realm of progress. Their inherent violence and neglect remains unchanged. As subjects of the reserve, ‘Indians’ are also stuck in the past, forever at risk of being transported to these spaces in which justice cannot be achieved. As Linda Tuhiwai Smith (1999) discusses, Western concepts of space and time are encoded in language, philosophy and science – and, socio-legal scholars would argue, in law. Western conceptions of space “have meant that not only has the indigenous world been represented in particular ways back to the West, but the indigenous world view, the land and the people, have been radically transformed in the spatial image of the West” (51). While the rest of BC was opened up for ‘development’ or settlement, moving forward through time, reserves remained outside these zones of ‘progress’. Some efforts to move reserve economies in to the future, such as through selling land, can be seen as attempts to reimagine reserve spaces as enfolded in to the time and place of modern Canadian socio-political relations

The colonialscape covers up the ways in which reserve economies and politics are produced through policies and programs of neglect. They were never set up to thrive, but to make themselves obsolete by getting rid of ‘Indians’ altogether. Byrd’s (2011) analysis of U.S. empire is useful here, as she contends that “ideas of Indians and Indianness have served as the ontological grounds through which U.S. settler colonialism enacts itself as settler imperialism” (xix). Here, I aim to provide a geographically based analysis of the way Indianness leaves indigenous people “everywhere and nowhere” (Byrd 2011, xix) in the Canadian colonialscape, contending that justice wormholes can be configured through various spatio-legal mechanisms to reproduce reserves and perpetuate the erasure of Indigenous territorialities.

Geographic boundaries around reserves themselves are also materially significant for Indigenous people in BC. An examination of the daily life of reserve residents reveals the impact of their fractured social and geographic isolation. There are a number of small reserves in the area around Williams Lake, where I travelled as a consultant working with Victim Services to support a project to assist in the development
of programs for local youth. None of the surrounding reserve communities had high school available, so young people had to travel to Williams Lake for school. Many of these students lived in Williams Lake, apart from their families, reminiscent of residential school days. Isolated from familial supports, I heard that some of the youth had become involved in gang activity, and many dropped out of school. Driving to one of the nearby reserves, I was struck by the lack of buildings of any kind along the small roads, and the total isolation of these communities. We approached a cluster of buildings and a cross road that indicated we had arrived ‘somewhere’. But for young people living there, it was obvious how the lack of educational opportunities and lack of jobs emerged directly from the isolation and lack of resources within the reserve itself. The only jobs available seemed to be at the band office, which was a new building of only a few rooms. While isolation may be desired or beneficial for some Indigenous people as a way to maintain traditional land use and connections to territory, we know that reserve geographies in BC often do not match up with Indigenous territorialities.

These realities of isolation are out of sight, out of mind for most Canadians, including the government officials making decisions about services for reserve residents. Rather than seeing that low employment, high suicide rates, high alcoholism, and high drop out rates emerge within a set of constrained opportunities for young people, ‘Indians’ are just seen as lazy welfare bums, trouble makers and violent offenders. Thus, more government intervention is justified because of ‘Indians’ failure to succeed, and the negligence of the reserve geography itself is rendered invisible.

The embodied realities that are erased through the naturalization of the colonialscape are illustrative of the underlying Indigenous socio-legal relations which cross over reserve boundaries. Although tethered to reserves through the Indian Act, Indigenous people are indeed mobile, and more and more natives in BC now live off reserve. Indigenous people often move between reserve and non-reserve spaces in their daily life both in order to access services and to maintain family relations. In tension with their legal subjectivity as ‘Indians’, Indigenous people have maintained and sustained their own legal subjectivity through activations of cultural, legal and political systems that were here prior to settlement. Although these legal relations may not be visible within the terms of Canadian law, they are productive of categories of knowledge and identity which are lived in tension with those of the colonialscape under Canadian law.
Some have argued that the very representational tools used to naturalize colonialscape logics—such as gridded maps—can be used as tools of resistance which express active Indigenous spatialities. Sparke (1998) writes that maps can be used to “dim the violence of displacement” (485) yet can also provide sites in which surviving and continuing Indigenous territorialities can be represented simultaneously with those of colonialism. In a study of Indigenous politics in urban Australia, Jane Jacobs (1996) draws on Said in stating that anti-imperialism efforts are geographical because the imperial project entails acts of geographical violence. "For the colonized, insurgency is in part a search for and restoration of place lost" (150). Maps, as expressions of the cartographic vision of the world, can be reclaimed by Indigenous peoples in representing places in a hybrid vision using a spatial narrative that can be widely read, yet “unsettles the comprehensive hold of colonial constructs” (Jacobs 1996, 151). Sparke (1998) calls this remapping an example of “contrapuntal cartographies” (467), bringing together the dominant colonial discourse and other, older histories against which the dominant discourse acts. In the terms of this research, I understand this dual mapping as a spatial representation of legal pluralism.

Indigenous geographies are productive of another imaginary and diverse legal relations which produce legal subjects spatially rooted in Indigenous worldviews. These subjectivities are not temporally or spatially determined by the Indian Act nor the jurisdictional reach of the Canadian state, but emerge within relations which reach back prior to Canada’s formation. If we understand the colonialscape to cover up the violence of Canadian law, and to naturalize bodily violence against Indigenous people by constructing them as reserved subjects, making interventions into the colonialscape is one possibility for shifting norms around violence. What spatial imaginary is put to work under the inherently plural vision of Indigenous law?

The texture, shape and potential of pluralistic law in BC, particularly its anti-violence strategies, are explored in the chapters that follow. In particular, how might our definition of violence change if we do not separate the violence of erasure central to ‘Indians’ and ‘Indian space’, and the embodied violence naturalized within these categories? Although the land was imagined as empty, and made to be legally empty, we know through Indigenous peoples lived experiences, oral histories and legal
relations, that the land was not empty. It was, indeed, rich with life. Life that goes back to time immemorial, not back to the date of Canada’s formation as a state.

Despite the ways in which the violence of Canadian law reproduces Indigenous peoples’ dehumanization, we continue to turn to the criminal justice system and changes in legislation, in situations of crisis. Although the utility of Canadian law and recognition within normative legal categories have been examined in relation to land claims, cultural knowledge and other issues of collective and personal rights, I now turn to examining its utility in cases of interpersonal violence. In the next chapter, I discuss several cases in BC in which violence against Indigenous women and girls, men and children has become visible within Canadian social and legal discourse, resulting in court cases, inquiries and the creation of new governmental monitoring tools. I describe how this recognition is achieved and how legal actors and systems respond in light of this recognition. In doing so, I aim to highlight the interpersonal level at which colonialscape logics are manifested in the everyday lives of Indigenous people, as they seek justice within systems that continue to transform them into subjects of reserved spaces in which violence is expected. In these examples, it becomes clear that colonialscape logics serve to naturalize violence in urban streets, remote highways, and private homes, indeed, anywhere an ‘Indian’ body might turn up.
4. Naming Violence, Seeking ‘Justice’: struggles for visibility

Having traced the historical construction and naturalization of ‘Indian’ spaces within colonial Canada, I now turn to discussing the way these spatializations are materialized in the everyday lives of Indigenous people as they seek justice for violence. Although violence against ‘Indians’ has been naturalized within their categorization as colonial subjects, several cases have brought public and legal recognition of violence in recent years. The most widely publicized case achieving sustained visibility has been that of missing and murdered Indigenous girls and women, originally focused on violence in the Downtown Eastside of Vancouver, with a subsequently expanded focus across Canada. It is useful to discuss these cases because community activists, family members of missing women, and scholars alike continue to appeal to Canadian law for recognition of violence within federal and international legal venues, believing this recognition will open up avenues for stopping the violence. Yet, given the analysis of the colonialscape in the previous chapter, I question the inherent limitations of Canadian law to denaturalize violence against native people, given that it gets its power through our dehumanization. These cases of visibility therefore produce useful indications of the limitations of recognition of violence within Canadian law, drawing attention to the material outcomes of legal intervention or action – outcomes which are frequently insufficient at best. Additionally, my own personal involvement in actions to appeal for recognition of this violence, as well as my work with government and community agencies in making sense of the cases, provides an often unacknowledged and unseen perspective. I thus aim to describe these cases through utilizing my own agency as an Indigenous legal technician, highlighting the efforts of other technicians with whom I have worked over the years while remaining grounded in daily realities of violence in communities across BC.
Many of the details I describe here may seem mundane. But it is precisely through these mundane engagements with Canadian law that violence becomes normalized and perpetuated. I want to draw attention to what individual Indigenous people and their allies across BC have been doing in the face of tragedy. Even those Indigenous people who do not believe in nor trust the Canadian justice system turn to it for answers when deaths of an outrageous nature occur – dozens of murdered women, an unconscious man dumped in an ally by police only to die hours later, and the deaths of children taken in to the ‘care’ of provincial authorities under the guise of protection. So it is important to ask how recognition of this violence within Canadian law unfolds, and what is achieved in the process of achieving visibility? It is these questions I hope to explore by outlining the mundane details of achieving recognition in the cases outlined below. In some ways, I want the social and legal mechanisms described below to speak for themselves, as I think there is something to be learned from witnessing how law works to reproduce the colonialscape in the day to day lives of Indigenous people as they experience violence and inequity.

In this section, I begin by discussing the growth of the discourse around ‘missing and murdered Aboriginal women’, in part through my own involvement in education and research related to issues facing Indigenous girls in communities across BC. I then discuss two additional types of violence that have gained recognition and visibility – the death of Downtown Eastside resident Frank Paul and the systemic neglect of children and youth in government care. Using these three examples, I discuss how violence that normatively goes unseen emerged into a topic of public concern, and outline the legal investigations and actions that resulted from their recognition. While so many incidents and types of violence continue to go unacknowledged, I highlight the work of individual family and community members who are often at the heart of pushing for legal and social recognition of violence. At the same time, I question what is achieved in cases where violence is recognized through court cases or public inquiries, given that they have thus far failed to change the levels of violence happening in the daily lives of Indigenous people. Additionally, I draw attention to the multiple forms of violence that are revealed in tracing these dynamics of visibility and invisibility, as colonial power dynamics continue to create limitations around which forms of violence can be seen, thereby keeping the violence of law itself out of view.
4.1 Violence against Indigenous women and girls

4.1.1 The Downtown Eastside

In 2007, serial killer Robert Pickton was convicted of the murder of 6 women who had disappeared from the Downtown Eastside of Vancouver between 1999 and 2001. Remains or DNA of a total of 33 women were found on his property after a search warrant was issued in 2002. With this case, the reality of violence against women in this neighborhood of entrenched marginalization gained national and international recognition. However, the conviction was of no surprise to the many advocates who had been working for the past twenty years to gain the attention of police and the public in the numerous cases of murder and disappearance.

In 1991, the first public memorial march was organized by women in the Downtown Eastside after a Coast Salish woman\(^9\) was murdered on Powell Street and her body parts were strewn across the area. The march was intended to be a way to remember and mourn the murdered woman, and to draw attention to the lack of police action in solving her case. Moreover, it was intended to draw attention to the lack of efforts to find the murderers of a number of women who had been killed over the years, and to take seriously the cases of women who had been abducted or otherwise disappeared. The march was organized and led by women who live and/or work in the Downtown Eastside, primarily Indigenous women, and most of the people involved in organizing the march had a personal relationship with at least one woman who had been killed or gone missing. These efforts were rooted in a network of relationships within the Downtown Eastside, as well as their family members and other supporters – this is important to note, because most discussions of the Downtown Eastside leave out the ongoing resistance, voice and agency of its residents. Banners with women’s names were displayed along with photographs of women who had disappeared or been killed – many of the names did not appear in any police ‘missing persons’ database at this point, hinting at the ability for individual community members to more fully account for this violence than technicians of Canadian law. In reporting girls and women from this area

\(^9\) The woman’s name has been kept private, out of respect for her family’s wishes.
missing, police often said that it was common for transient and street-involved women to disappear for a while, so they were unable to do anything. As I will discuss later, this story about certain people as ‘transient’ and therefore prone to disappearance was also a common barrier to having police take seriously the cases of Indigenous girls who went missing in northern BC.

Just out of my teens, I attended my first march in the mid-1990’s, as I was writing my undergraduate honors thesis on violence against women in the sex trade. For this year, and several years afterward, I attended planning meetings and volunteered at the march itself. At that first march, I expected to be one of many Indigenous women taking part in this communal memorialization of Indigenous girls and women. But I did not expect to have a personal connection to those who had been lost. I was taken aback when reading the list of names on the large fabric banners, taking stock of the women in whose names we were gathering. I came across a familiar name: Sheila Hunt. As I have written elsewhere (Hunt 2013), it was then that I realized the extent of the shame and silencing around involvement in sex work, drug use, and homelessness. If a relative of mine was among the missing women, I probably would never hear about it due to the stigma around sex work, drug use and street involvement. I was further surprised at the lack of research on the overrepresentation of Indigenous women in the street-level sex trade in Canadian cities like Vancouver, which led to my decision to write an undergraduate honors thesis on the subject, confronting the silence and shame which surrounds Indigenous women’s sexuality.

4.1.2 Agency of women in the Downtown Eastside

As community groups and individual advocates continued to organize a memorial march each year, they also created ways to address safety at a local level. For example, bad date sheets were created by sex worker organizations such as PEERS (Prostitutes Empowerment Education Resource Society) and PACE (Providing Alternatives Counselling and Education) Society, providing a space for sex workers to share information about violent or exploitative behavior. Unable to turn to the police for help unless they wanted to risk criminalization themselves, bad date sheets were a way to gather information so that sex workers could keep one another informed. Women also worked in pairs or had a spotter – methods that are widely used by street level sex
workers. It is important to note that alongside efforts to gain legal recognition and police action to stop the violence against sex workers and others in the Downtown Eastside, sex workers were also taking it upon themselves to monitor, prevent or minimize violence. It was the leadership of women in this community, including Indigenous women, that persisted in drawing attention to the high rates of violence and murder facing women here. It was these assertions of power, agency and voice that finally resulted in police recognition of the numbers of women whose deaths and disappearances went unsolved.

In 2000, nine years after the first memorial march, the Vancouver police formed the Missing Women’s Task Force with a list of 27 women’s names that quickly grew to more than 60 (Oppal 2012). In 2002, a search warrant was issued for the property of William Pickton, who would later be convicted of the murder of 6 of the missing women. While the faces of missing and murdered women continued to be represented as one of a patchwork of faces lined up like mug shots on posters of the missing (England 2004), Pickton rose to national and international fame as an eccentric pig farmer turned serial killer. It was Pickton’s name, not those of the women he brutalized, who gained recognition in the process of sensationalizing his crimes. Further, entry into the legal system entailed categorizing each of the women’s deaths and the evidence surrounding her murder in terms which reduced the horror of these crimes from dozens of victims to only 6. Within Canadian legal terms, the individual lives and deaths of these women did not matter so much as the weight of the evidence and its ability to stand up to potential scrutiny in the combative court process. Thus, Pickton remains convicted of the murders of 6 women, despite the fact that remains or DNA from thirty-three women were found on his property, all but one of whom were identified (Oppal 2012). The logics of the colonialscape and the technical mechanisms of Canadian law might be understood as working together to naturalize the processes by which some women’s lives ‘disappear’ or are positioned outside of criminal proceedings in these investigative processes.

4.1.3 Northern BC: violence along the highway

In the meantime, similar cases of police inaction rose to visibility in northern British Columbia when, in 2002, a young woman went missing along the highway between Prince Rupert and Prince George. Life in Northern BC continues to be
imagined by many within frontier logics, in which the lands remain under utilized and under developed, and its native inhabitants are beyond the norms of Canadian society - 'out of sight, out of mind'. The disappearance of Nicole Hoar, a young white woman who was tree planting in the area, sparked police investigation as well as forcing police and public recognition of the many similar cases that had thus far gone unacknowledged. Indigenous people in small communities all along Highway 16 and in Prince George, had been agitating for years for the police to acknowledge the cases of missing and murdered girls and women in the area, but they had thus far failed to gain the attention of the media or police. As previously mentioned, families had tried to report girls as missing but were frequently told by police that the girls probably went to stay with friends or that they should just wait awhile and see if they showed up somewhere. These attitudes indicate that the girls were seen by police as being prone to inconsistency or to moving around a lot, and a lack of communication or connection with family members and caregivers was expected, such that their sudden disappearance was not cause for alarm. As Christine Welsh documents in the film Finding Dawn, when 16-year-old Ramona Wilson went missing in 1994 while hitchhiking near Smithers, it took more than a year for the police to start looking for her. Her body was found the following year not far from where she had disappeared.

However, following Nicole Hoar’s disappearance, the lack of police action was put into the spotlight and a police task force was created to investigate cases along Highway 16 from Prince George to Prince Rupert. Eighteen cases were compiled, although local communities have since identified more than 40 cases that they thought should have been on this list. Again, categories of Canadian law normatively work to render these additional 22 cases beyond the purview of law through legal technicalities put in to practice by its technicians – in this case, police and Crown counsel. Highway 16 became dubbed the ‘Highway of Tears’, and a symposium was held in 2006 bringing together stakeholders, family members and community advocates from along the highway. A series of recommendations were created, naming the lack of a viable transportation system as one of the root causes of this violence, as it forced people to hitchhike across this vast territory. Housing, poverty, education and raising capacity to address violence within families and local communities were also prioritized through this community dialogue. Thus, individual community members made visible the violence of
governmental neglect and its relationship to the interpersonal violence being targeted at young women and girls along the highway. Although this legal violence was named in reports that were funded by government agencies, governmental recognition worked to neutralize their effect by limiting its meaning, putting the onus back on local technicians to bring about change.

Thus, in 2005, Carrier Sekani Family Services was given provincial funding to hire a coordinator - Lisa Krebs, one of the interview participants, was the original coordinator who was tasked with implementing the recommendations from this forum. Lisa conducted a survey in communities along the highway and found that 100% of respondents reported experiences of violence in their lifetime: everyone had been touched by violence. Yet Lisa estimated that only 10% of this violence was reported to authorities, and, like in many communities, most of it went unacknowledged. In the years that followed, Lisa and others undertook community level research and violence-prevention education with the small amount of government funding they had received. However, very little action was taken to address the widespread root causes listed among the community action items. Billboards announcing “friends don’t let friends hitchhike” were put up, as were other billboards with pictures of missing girls. Local level education was conducted to address violence prevention among youth and service providers, which will be discussed in the following chapters as having the potential to enact local level change. Yet action items like the creation of a bus system were more complicated in this northern region which included a patchwork of jurisdictional responsibilities for services on reserves, in cities and in small towns. Who would take responsibility for addressing the practical measures that would increase choices for community members who want to minimize the risks they take? Thus far, no one has answered the call. Within the colonialscape, ‘Indian space’ continues to be constructed through neglect and the expectation of violence, such that this lack of action goes unproblematized.

**4.1.4 Judge Ramsay**

During this time, I was doing community based research, education and community support for initiatives on youth sexual exploitation, sex work and violence in Prince George and a number of areas along Highway 16. Over a period of several years,
my colleague Natalie Clark and I began hearing reports of a provincial court judge who had been picking up teenage native girls, some as young as 12 years old, who were involved in the street-level sex trade, and badly beating or abusing them. Although police began investigating these reports in 1999, they did not take action to arrest him because they were unable to obtain any official reports from victims (Justice For Girls 2005). Natalie and I were familiar with a female police officer who worked carefully over many years to build a relationship with some of the girls who had made informal reports of the violence (Justice Institute of BC 2006). Finally, a 16-year-old young woman made a formal statement after she recognized the judge in her child custody case, Ramsay, as the assailant who had severely beaten her when she asked him to wear a condom. Following her report, three other girls came forward to make formal statements of the violence Ramsay had inflicted on them when they were between 12 and 16 years of age. Ramsay targeted young Indigenous girls whom he had seen in his courtroom and knew were vulnerable due to his position of power as a provincial court judge. After being arrested, he admitted to incidents between 1992 and 2001, picking the girls up for paid sex and then driving them to wooded areas to sexually and physically assault them, leaving one girl naked on the side of the highway. He admitted to telling the girls that no one would ever believe them because they were “just a whore” (Justice for Girls 2006).

Ultimately a number of charges against Judge Ramsay were stayed in exchange for his guilty plea to assault causing bodily harm, breach of trust and three counts of buying sex from a person under age 18, which was entered on May 3, 2004 (Justice for Girls 2013) for which Ramsay received a 7-year sentence. Recategorized as witnesses to the brutal and dehumanizing violence they had experienced at the hands of this powerful technician of Canadian law, the girls did not have an opportunity to tell their stories in court, nor did they see ‘justice’ being served for the extent of their injuries. Through legal technicalities, Ramsay’s plea-bargain involved skewing their individual experiences into lesser charges. Ultimately, the outcome of the case had little, if nothing, to do with the girls’ experiences of violence nor their need for justice, healing or restitution.

These four girls had been in the care of the provincial government and all were members of local First Nations bands. The government provided funding for housing and a support worker in the months leading up to the court case. Media reports focused on
Ramsay more than the girls themselves, although a few reporters from Vancouver found out where the girls were staying and tried to get an interview (Hunt 2006). The case was portrayed as an isolated incident of a judge gone bad, failing to mention the other reports the girls had made of similar treatment by police officers and other powerful men in the community.

After Ramsay pled guilty to the reduced charges, my colleague Natalie Clark and I interviewed service providers who worked to support the girls through the court process and were involved in various education and prevention efforts in Prince George (Hunt 2006). The investigating police officer who had worked for so many years to build a relationship with the girls and a network of service providers in the area was moved out of town once the case was closed. This was not her choice but was rather experienced as a punishment for bringing this case to light. The team of service providers working with the girls said that all support dropped off once the conviction was achieved, and the girls returned to their life as they had before, with no support to make different choices. Two of the girls are now dead, their deaths related to the health impacts of drug and alcohol use, including at least one overdose. None of the people we spoke with said that the court process had a positive outcome for the girls. Even though justice was supposedly served, the court process did nothing to change the girls’ life situations, nor to make the provincial government accountable for the violence these girls had faced while ‘in care’. Further, nothing was put in place to prevent the girls from experiencing more violence, despite the risk they were at due to their street involvement, status as wards of the state, and their precarious position following an emotionally difficult ordeal. The official responsibilities of the government funders were fulfilled and it was back to normal. Despite having gained legal recognition of this violence, the girls themselves remained naturalized subjects of degenerate spaces of the reserve and inner city streets, as their ability to make decisions about their lives or speak of their own experiences was denied. As witnesses in Canadian law and as wards of the Canadian government, their subjectivity as ‘Indians’ was maintained. The colonialscape does not allow for Indigenous girls to be represented on their own terms, nor for their underlying humanity to be achieved.

In April 2006, representatives from three agencies – Justice For Girls, the Native Women’s Association of Canada, and the BC Native Women’s Society – met with the
BC Attorney General at the time, Wally Oppal, to call for an inquiry into this case and other cases of violence against Aboriginal teenage girls. In a briefing note, a number of areas of concerns were outlined to justify the need for this inquiry: hate motivated crimes; justice system responses; support and advocacy for girls, breach of international rights and systemic review (Justice For Girls 2006). Thus, the seed was planted to conduct a larger inquiry which might connect the violence in northern BC with that in the Downtown Eastside.

4.1.5 A shift in scales of visibility: from Downtown Eastside to national level

At the same time, recognition of the Pickton case sparked national campaigns about Indigenous women who had gone missing or whose murders remained unsolved in areas across Canada. The Native Women’s Association of Canada (NWAC) received funding in 2005 to create a five-year national research and education campaign called Sisters in Spirit (NWAC 2010). This research and education initiative followed a 2004 report from Amnesty International Canada in which the extent of violence against Indigenous women was described as a human rights crisis. Over 5 years, NWAC conducted research and education on violence against Indigenous women, creating a series of pamphlets, powerpoint presentations and reports on ‘missing and murdered women’. In 2010, NWAC released the final report from their national research, reporting a total of 582 girls and women whose deaths or disappearances remained unsolved across Canada. Their goal was to create a ‘census’ of cases of missing and murdered Aboriginal women and girls, documenting every known case. NWAC received information on more than 740 cases, 582 of which were found to meet the database criteria: the woman or girl is Aboriginal (status or non-status First Nations, Metis or Inuit; the case involves a female or ‘living as a woman’ (includes transgender or transsexual women); the woman or girl is missing or died as a result of homicide, negligence, or in circumstances of family or community members consider suspicious, and the woman or girl was born or connected to a community in Canada (NWAC 2010). In developing their research methodology, NWAC both attempted to develop categories comparable to those of Statistics Canada in order to allow comparability between quantitative findings, and to involve some community-based elements by providing a venue for the voices of
family members to be heard. 160 of the 582 (more than a quarter) of the reported cases occurred in British Columbia.

Since 2005, NWAC has become seen as the voice for ‘the missing and murdered women’, rather than the leaders in small communities like Smithers, BC or urban centres like Vancouver. This scalar shift in visibility from violence in marginalized communities such as the Downtown Eastside or remote parts of northern BC to generalized violence against Indigenous women across Canada was significant for what kinds of subjects were constructed through ‘the missing and murdered women’ discourse. NWAC was an entirely different political entity than the small front-line organizations serving women in the Downtown Eastside or the families of missing girls along Highway 16. NWAC is one of five national Aboriginal organizations and aims to “speak as a collective voice for Aboriginal women” (NWAC 2010), with core funding from government sources. In the process of shifting from community-level marches and educational campaigns to national Sisters In Spirit initiatives, the language moved away from particular manifestations of spatialized violence to generalized violence against native women10. Lost were the intricacies of life in either the Downtown Eastside or northern BC – the factors shaping the normalization of violence in both rural and urban areas were distinctly formed and discussed in ongoing advocacy in those communities. The criminalization of sex work, poverty and drug use in the Downtown Eastside were at the heart of processes of normalizing violence in that area. The voices of sex workers, Indigenous and racialized women, homeless women and their families were central to messages about missing and murdered women that originated in the Downtown Eastside. And, simultaneously, the isolation facing girls in rural northern reserve communities, lack of transportation, safe housing and other basic needs shaped violence facing girls in northern BC. The voices of single mothers, street outreach

10 Although it might be argued that it is challenging to develop a national strategy that also places local intricacies at its heart, I do believe it is possible, as the desire to be attuned to both local and systemic factors is central to my own approach. While the stories of individual women are present in NWAC’s Sisters in Spirit initiative, and while I believe much can be gained from the creation of broadened visibility and political pressure, it is also important to consider what specificities were lost in this move toward generalized statements about gendered violence. Following my witnessing methodology, this analysis is informed by personal stories shared with me by numerous people who feel their voices have been shut out of national discourses on ‘the missing and murdered women’ issue as it has grown.
workers, and Indigenous youth from rural communities were central to the way violence along Highway 16 was represented there. Yet the messages coming from NWAC were void of these intricacies, and the spatio-legal relations through which violence in these diverse communities occurred was made, once again, invisible. By creating generalizations about violence against Indigenous women void of the particular mechanisms which shape the communities in which they live, NWAC’s statistical research findings worked to obscure the reasons why violence was prevalent in specific community contexts. For example, NWAC research reports stated that ‘the missing women’ is largely an urban issue and that a majority of the violence experienced by Aboriginal girls and women happens in ‘a residential dwelling’. For advocates along the Highway of Tears, these findings fail to reflect the root causes of violence here, as it does for the Downtown Eastside where much violence continues to take place in cars, outside, or on highways or streets.

Further, the 2010 Sisters In Spirit final report lacked an analysis of how the stigma surrounding sex work impacts violence against Indigenous women, stating that “involvement in prostitution is not a ‘cause’ of disappearance or murder” (NWAC 2010, 31). As previously discussed, this finding is stated alongside their own statistical data which say that of the 149 cases in which sex work involvement is known, half of the women were involved in sex work at the time of their disappearance or murder. Although NWAC’s conclusions seem to draw attention away from sex work involvement to broader factors impacting violence across a woman’s lifetime, it minimizes the impact that the stigmatization and criminalization of sex workers has on both rates of violence and its normalization. Without a focus on the diverse realities and contributors to violence across the distinct geographies in which Indigenous girls and women live, the rhetoric around ‘the missing and murdered women’ has arguably become one of a singular type of victim. In my work, I have seen that this discourse helps to contain violence against Indigenous women within categories that are palatable to, and indeed expected by, wider Canadian society.

The Sisters in Spirit campaign focused on positioning ‘the missing’ within categories of daughter, sister, auntie and grandmother ‘who are deeply loved and missed’: “Aboriginal women and girls are strong and beautiful. They are our mothers, our daughters, our sisters, aunties and grandmothers.” (NWAC 2010, np). The focus on
vigils and remembrances has the potential to powerfully memorialize missing women, yet it fails to center the diverse realities of violence, poverty and isolation in particular community contexts, which continue to be highlighted in the smaller scale initiatives in communities like the Downtown Eastside. Freda worked with the families of missing and murdered women in her role at the Native Liaison office at the Vancouver police detachment. Since then, she has moved from her role at this non-profit organization to working directly for Victim Services Division, where she has supported families of missing and murdered women across the province. Recalling the early gatherings of victims’ families, she said the issue was not discussed as purely ‘an Aboriginal issue’ but as something impacting women in the DTES of all racial backgrounds. When looking for a symbol to represent the missing women, the families “wanted the medicine wheel because it represented all races, and the women were all races. They looked it as a women’s issue, a poverty issue and an addictions issue. It wasn’t a race issue.” (Freda). She goes on to recall that in the early days, “When the first women went missing, I figured it was being dismissed because they were native, until I started working with the other families, and realized they were all treated the same. And so it was not about race, but about their status, where they lived, what they wore, you know.” As the missing women discourse has been taken up at a national level and amongst political and governmental organizations in the years since then, the spatio-legal nature of this violence and its normalization has become obscured (see Pratt 2005).

During the years of the Sisters in Spirit campaign, family members of women on the list of missing and murdered women joined in the efforts, bringing the stories of their losses to the campaign. Bridget Tolley was one such woman\(^\text{11}\). Her mother, Gladys, was walking home drunk when she was struck by a police car and killed. She later found out that the brother of the police officer who killed her was the investigating officer on the scene, and not surprisingly, he found his brother to be not responsible for her death. Rather, Gladys’ drunkenness was blamed as the cause of her demise. Bridget has been advocating for an inquiry into her mother’s death and the investigation that followed, and she joined her voice with those of other families in Sisters in Spirit. But in 2010, NWAC’s

\(^{11}\) Bridget Tolley shared her story at an event called No More Violence in Toronto in December 2012, where I presented on a panel alongside Bridget. The details from her story are taken from that public event.
funding for SIS was not renewed. Instead, a new funding cycle initiated a campaign called Evidence to Action. The database of names was handed over to a newly established national missing persons center (not specific to Indigenous people), and family members of missing women listed in the database were denied access to its contents (Tolley 2012). Further, the official numbers of ‘missing and murdered women’ have remained steady since NWAC’s research ended, causing family members to wonder if the database is inactive. If names were being added as new cases of missing women emerged, wouldn’t the numbers in the database grow accordingly? Tolley has since started the organization Families of Sisters In Spirit (FSIS) to continue efforts to bring family’s voices forward, despite the government’s funding changes. Once again, as a federally funded organization positioned in direct relationship to the Canadian government, it is important to ask if, and how, NWAC’s ability to name legal violence is limited. When federal funding required them to change their tactic, they did, leaving family members like Bridget Tolley on the outside of efforts which were supposedly designed to give people like her a voice. Although the database of stories of missing and murdered women had the potential to point to jurisdicational gaps and other mechanisms of the colonialscape through which Indigenous women’s dehumanization is accomplished, the stories were instead enfolded into a police database devoid of mechanisms for identifying biases of race and gender. As individual cases of murder moved through these mechanisms of law, their potential to disrupt colonial power relations was neutralized. Powerpoints, pamphlets and research reports can only go so far in addressing foundational colonial inequities – I say this as someone who, for many years, was intent on addressing violence through these same means.

While there have been numerous benefits from developing a national discourse in which to name the phenomenon of ‘missing and murdered Indigenous women’, this scalar shift also raises questions about what happens when those representing the issue move further and further away from the communities in which targeted violence is unfolding. Although, as will be discussed in the next several chapters, it is oftentimes safer for people from outside First Nations communities to expose realities of violence, in this case many people in the DTES, northern BC and other communities across Canada had been raising the issue and telling their stories locally over many years. Within BC, the increased visibility of this issue brought changes in how violence was represented
and who sought to both represent and respond to this violence. In my interviews, participants reported that the rise in visibility and recognition was successful in improving the ability to name and talk about violence across diverse political and community contexts. However, it also had a number of negative effects that included new forms of violence. With new pots of funding becoming available through targeted efforts of the provincial government to ‘do something’ about Indigenous girls, a number of organizations suddenly claimed to be experts on ‘missing and murdered Indigenous women’. This caused tensions between those organizations and smaller community groups who had been working on issues of violence for years at a community level.

For example, a lower mainland organization providing education to school children on youth sexual exploitation was given funding from the provincial government to conduct workshops in First Nations communities along Highway 16. This organization had a provincial mandate to offer educational and violence prevention workshops to school age children throughout BC. Thus, they had conducted workshops in northern schools in the past, but their staff were from the lower mainland and much of their curriculum was framed around issues specific to urban areas. In applying for these new funds, the organization named the vulnerability of Indigenous children living in northern communities, despite their lack of partnerships in northern BC and lack of consent from First Nations to apply for funding on their behalf. Meanwhile, northern First Nations were seeking their own funding to strengthen local efforts to address violence and sexual exploitation, working closely with elders, youth and community leaders to develop programs that would suit each individual community. Thus, a number of people became incensed when the lower mainland-based organization contacted them to set up a workshop targeted at the Highway of Tears.

I was asked to mediate between the two groups drawing on my relationships with representatives from both communities as well as my knowledge of northern First Nations cultural protocols. Coming together in the spirit of developing a way forward to

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12 This example comes from my firsthand experience, not from an interview or text. I chose not to name this organization because this phenomenon of urban organizations receiving funding to do work in rural and northern communities is not unique to them. I do not want to single out this organization, but instead to highlight the funding struggles that arose as issues of violence against Indigenous girls became a target area for government funding.
strengthen local capacity to address violence, I emphasized creating a dialogue format in which northern community partners felt heard and valued in envisioning programing and funding models that would positively impact their communities. The discussion led to the participating organizations and communities agreeing to apply for new funding to train northern stakeholders to develop and implement prevention and education workshops in their own communities, with the lower mainland organization providing expertise on using popular theatre with youth in school settings. This example demonstrates how an issue’s rise to visibility creates new language that can then be taken up in government rhetoric, causing community groups and individuals to rush to claim ownership over the issue in order to access funding. However, it also demonstrates ways that a culturally-informed approach to conflict resolution rooted in relationship-building and mutual respect can lead to new collaborative solutions with Indigenous knowledge and agency at the center.

As a result of this rush to claim funding related to the recognition of violence facing Indigenous girls and women (particularly youth), participants reported a rise in lateral violence. For example, several Indigenous organizations in cities across BC had been providing services to support victims of violence and families of girls who had been killed or gone missing for many years. However once funding became available to support efforts targeted at the newly named Highway of Tears and phenomenon of ‘missing women’, a struggle over jurisdiction ensued. Competing organizations claimed, essentially, that the victims were ‘theirs’. This fight over resources is not unique to the issue of missing women nor violence prevention, but is prevalent among service agencies in places where resources are scarce.

There are some interesting connections to be made to the work of other researchers and scholars who have examined the outcomes of this kind of struggle over resources for anti-violence initiatives. For example, Melissa Wright’s (2006) account of marches to demand accountability for the murders of women in northern Mexico has many parallels to the Canadian context: “Over the last decade, as international coverage of the violence has grown, various new organizations have emerged to lead the protests and to provide structure for people who want to express their outrage over the crimes and the lack of governmental response to them” (152). The tensions and opportunities arising from increased visibility of violence, the provision of new resources and funding, and the social and political differences between community groups are areas I would like to explore further in future research.
4.1.6 Calling for an inquiry, recalling the harms of the inquiry

As mentioned, a number of organizations advocated for a public inquiry into the issue of missing and murdered women in communities across BC. How had a serial killer been allowed to continue targeting women in the Downtown Eastside for so long, despite the fact that a number of reports had been made naming Pickton and his farm? Families of women whose remains were found on the farm, but who were not listed among Pickton’s victims in the official charges against him, were vocal throughout the court process, speaking to media about the lack of justice for their lost loved ones. And the memorial marches continued to operate at a local level, bringing increasing numbers of participants out to remember the injustice faced by women in this community, with a high concentration of Indigenous victims.

In September 2010, the provincial government established a Missing Women commission of Inquiry and appointed Wally Oppal to head the commission. From the start, the scope of the commission was at issue, as was the ability of Mr. Oppal to head the commission since, as Attorney General of BC from 2005 to 2009, he had authorized the stay of proceedings of twenty murder charges against Robert Pickton (Hunter 2008). Community advocates called for the cases of missing girls and women along Highway 16 to be included, given the similarities the cases had with those in the Downtown Eastside, both in terms of the overrepresentation of Indigenous victims and the lack of police response. However, it was decided that the commission would only address the issue of police response to official cases of missing and murdered women from Vancouver’s Downtown Eastside, thus similar cases in northern BC would be excluded from evidentiary hearings, and thus no findings of fact would be made for those cases. This decision excluded any cross-jurisdictional insights that might have come from the similarities between the profile of victims, the possibility that the same assailant was acting in multiple jurisdictions, and as numerous other factors that a broader examination might have highlighted. Indeed, the focus of the inquiry was not on the lives and deaths of the women themselves, but on the role of police in handling their cases once they had met their fate. Prevention, justice, and harm reduction were certainly not presented as a relevant issue, nor were broader societal issues of racism, sexism, colonialism and their manifestation in the actions of individual police officers and the mechanisms within the justice system itself.
Further, as the scope was being established by the inquiry’s governing body, it was determined that many of the organizations and individuals that had advocated for the inquiry in the first place would be denied intervener status. Commissioner Wally Oppal granted full participation to 18 groups (Missing Women’s Inquiry May 3, 2011), recommending that 13 groups or coalitions with close personal, community or historic ties to the women who had been killed or gone receive financial assistance to facilitate their participation in accordance with the commission’s ‘Practice and Procedure Directive for Evidentiary Hearings’ as authorized by the Public Inquiry Act, s. 9(1). However, citing limited financial resources, the Attorney General Barry Penner denied funding to 12 of the 13 groups, funding legal representation only for the families of missing women.

In the process, Downtown Eastside, First Nations and sex worker organizations were shut out of the process that would unfold in official documents, and would not be heard by the commissioner despite the history that many of the individual staff and family members had with women before they had gone missing and their role liaising with police and others after their disappearance or murder. Given the focus of the inquiry on police conduct, funding was instead provided to support the legal representation of police involved in investigating the cases over the years, including those on the missing women’s task force. A total of 12 lawyers were funded for police who were being questioned in the inquiry, while a denial of funding for legal representation effectively excluded “the voices of individuals and communities that it should have worked the hardest to include: Aboriginal women, sex workers, women who use drugs, and women living in poverty who were most affected by the Pickton murders and the resulting investigations, and who remain at extremely high risk for violence” (Bennett et al. 2012, 5). Further, rather than consulting with the Downtown Eastside community or with First Nations when the Province denied funding for this legal counsel, the Commission

14 The full participants that were recommended for financial support were: the families of missing and murdered women; Coalition of Sex Worker-Serving Organizations; The Committee of the February 14 Women’s Memorial March and the Downtown Eastside Women’s Centre; Vancouver Area of Drug Users, Walk4Justice and Frank Paul Society; Native Women’s Association of Canada; and, Dr. Kim Rossmo. The limited participants recommended for financial support were: BC Civil Liberties Association, Amnesty International and PIVOT Legal Society; Ending Violence Association of BC and West Coast LEAF; Assembly of First Nations; Carrier Sekani Tribal Council and the Union of BC Indian Chiefs; Women’s Equality and Security Coalition; Native Courtworker and Counselling Association of BC, and; First Nations Summit (Missing Women’s Inquiry, May 3 2011).
appointed two lawyers to represent diverse Downtown Eastside community and First Nations voices such as the Native Indian Brotherhood (Bennett et al. 2012).

As these decisions unfolded, long-time advocates for the missing and murdered women began calling attention to their exclusion from the process, labeling it “the sham inquiry”. Activists took to the street, taking over the intersection of Granville and Georgia Streets outside the courthouse throughout its seven months of proceedings. If they would be denied a voice inside the courtroom, they certainly would not be silenced outside. While advocates sought to position the voices of women from the Downtown Eastside, Indigenous women and their allies at the center of the inquiry, the inquiry served to recenter the voices of police and their legal representatives. In the process, Indigenous women and girls were reproduced as marginalized legal subjects through the eyes of those allowed within the inquiry process, rather than through their own voices or experiences. Spaces of official law and justice remained constituted by technicians of Canadian law who maintained their power by silencing those they deemed unnecessary. The voices of Indigenous people and Downtown Eastside activists who attempted to link the inquiry to larger colonial systems of power were physically and ideologically confined to spaces beyond ‘Law’, thus maintaining the naturalized order of colonial power relations.

Alongside the official inquiry\textsuperscript{15}, other kinds of documents were produced as part of the commission, including research documents, and a summary from community consultations to which stakeholders such as Downtown Eastside advocates were invited to attend. However, many stakeholder groups chose to protest the process in its entirety by refusing to be even peripherally involved. Included in these documents is a consultation report prepared by Indigenous lawyer Linda Locke who summarized seven community forums held in the northwest of BC. In these consultations, family and community members attested to the fact that Indigenous women continue to ‘fall through the cracks’ of ‘public safety’ measures. Yet, in sidelining the stories contained within the consultation report, the potential for these witnesses to disrupt colonialscape relations is neutralized. Although the consultations held meaning at a local level for individuals who

\textsuperscript{15} The wealth of documents produced by the Missing Women’s Commission of Inquiry can be found on the website http://www.missingwomeninquiry.ca/
participated and found an outlet for their stories, within the broader inquiry process, they remained outside the formal mechanisms of accountability. This categorization of certain knowledge and voices as inside the inquiry and others as beyond its reach was itself central to reproducing ‘Indian’ voices through their reserved subjectivity.

Nearing the end of the inquiry process, Metis lawyer Robin Gervais quit. Gervais had been appointed to represent the families of missing women and Indigenous stakeholders, but felt that the inequities in the inquiry process were systematically excluding Indigenous voices. In a personal statement, Gervais detailed the number of days police testimony had taken up, comparing it with the continual deferral of individuals she had lined up to speak. The process, it seemed, was not only focused on police action but was almost exclusively made up of the voices of police and their lawyers. Gervais’, who was positioned as an insider, a legal actor who was tasked with representing some of the most vulnerable communities in the case, thus removed herself from a process that had failed to live up to its promise of justice or truth. In the wake of her resignation, two other lawyers were appointed to act in her place. Importantly, having Indigenous women like Gervais inside the process might be seen as an attempt to validate the inquiry itself – one of the reasons community advocates had been calling for a complete dismissal of the process rather than peripheral participation.

Following the inquiry, the Civil Liberties Association, West Coast Women’s Legal Education and Action Fund and Pivot Legal Society released a report pointing out its structural failures, stating that the inquiry was a missed opportunity for reconciliation: “the Inquiry provided a critical opportunity to foster reconciliation between the criminal justice system and people directly impacted by the Pickton murders. It also provided an opportunity for reconciliation between the police and the community of the DTES, as well as the broader Aboriginal community; it could have laid the foundation for trust and mutual respect” (Bennett et al. 2012, 20). Despite the failure of various representatives of Canadian law to take violence against Downtown Eastside residents seriously, advocates continue to seek other legal remedies, such as public inquiries involving government officials to address systemic failures. Why do people continue to see hope of recognition and, indeed, ‘reconciliation’, in legal venues such as these? What might enable these legal measures to lead to actions that lessen the levels of violence?
experienced by women in the Downtown Eastside, and Indigenous people more broadly?

At an individual level, the inquiry did, however, provide a space for some family members of missing women to have their voice heard. A close friend of my family is the daughter of one of the women who is listed among the missing, though her remains were never found. She and her sister spoke at the inquiry, and from all accounts found the process to provide a meaningful venue for her to tell her mother’s story. It is important to recognize the individual variation in experiences of the inquiry, and ways that legal measures can provide an outlet for family members of victims to feel heard.

4.1.7 Appeal for United Nations inquiry

Yet another legal avenue for addressing the missing women has been sought by advocates and organizations across Canada and internationally. In 2011, the Native Women’s Association of Canada released a statement calling for a United Nations investigation into missing and murdered women across Canada and a diversity of groups and individuals have since supported this effort. In July 2013, premiers from across Canada agreed to support this initiative and in October of 2013 the United Nations special rapporteur on the rights of Indigenous people James Anaya also publicly provided support during a visit to Canada. This call reflected a feeling that the Missing Women’s Commission of Inquiry did not provide the measures to lessen violence and systemic discrimination against Indigenous women and girls. However, while this call to the UN might be seeking to reposition the cases of missing and murdered women as a human rights violation under international jurisdiction, it is still appealing to a statist legal system. Further, it is an appeal for an inquiry which is not legally binding. Both the inquiry conducted by Wally Oppal and the potential UN inquiry are processes which are more significant socially than legally. By this I mean that they draw attention to particular issues and provide a platform for issues of violence to be examined in a report that outlines recommendations, but there is no requirement that the government or legal representatives follow through with implementing them. They unfold within a bounded system of law that often serves to reinforce violence on the ground, particularly given the power of individual actors to fundamentally shape the inquiry process, its scope, the actors that fall within its gaze, and the outcomes allowable within it.
The inquiry, and protests against the inquiry, exposed a bounded legal process with the power to shut out those bodies, knowledge and views that would interrupt its predetermined meaning. It exposed the power of individual legal actors within supposedly fair or equal processes, to enact biases against those seeking recognition and participation – those seeking legal standing.

Throughout this process, sex workers were once again left out of both the national campaign and the inquiry process. Simultaneously, funding for organizations providing direct outreach to sex workers was reduced. On the other hand, the victims whose lives were being discussed were portrayed through their stigmatized status as sex workers. These women were therefore only visible as pure victims, in need of representation and saving by more powerful actors, rather than being given a voice or power over their own lives. I am not only speaking here of women who were among the missing and murdered, but also women who are at risk of the same fate today due to the continuation of stigmatization and criminalization of sex workers.

Having witnessed and participated in efforts to gain recognition of violence against Indigenous women over more than 15 years, I have seen efforts to name violence shift from the streets of the Downtown Eastside to offices in Ottawa. This has included attending community marches led by Downtown Eastside activists and residents, which continue to this day, as well as national initiatives such as information sessions held by representatives from First Nations organizations based in Ottawa. Across these venues, decisions about who gets to speak, what language is used to talk about violence, and what are considered desirable outcomes differ greatly. I have observed that as the issue is scaled up to the level of national discourse, the ability to name legal and systemic violence, and its relationship to daily interpersonal violence is compromised. Whereas marches in the Downtown Eastside continue to emphasize calls for police accountability, safe housing, safe injection sites, and other urgent issues which impact residents’ vulnerability to violence, the language in national campaigns use a very different tone.

For example, in 2011, I attended an information session held in a Victoria hotel conference room to hear about NWAC’s new Evidence to Action initiative focused on violence prevention and intervention. Watching the powerpoint presentation which
named broad goals to address violence against women, I was hard-pressed to identify how the ‘action’ outcomes such as resource guides and workshops such as these would impact violence faced by women in the Downtown Eastside. Absent from this presentation was any discussion of colonialism, the historic context of violence against native women, current systemic issues of poverty, patriarchy or state neglect or cultural resurgence, strength and self-determination. Although the issues named in their presentation included important issues such as support for families, the need to understand personal triggers, victim services, policy and legislation, and public awareness, the broad nature of these descriptions lacked the embodied realities of living in communities such as the DTES or rural reserves. I would argue that rather than working to humanize Indigenous women who are most at risk of violence, such as sex workers and residents of remote reserve communities, this representational shift has instead reinscribed the colonial subjectivity of marginalized Indigenous women.

Importantly, I believe scalar shifts can occur in ways that keep a diversity of Indigenous voices and lived experiences at the center, but they must be willing to move beyond perspectives which are aligned with government funders. My concern is that national discourses which are distanced from local community concerns increasingly become legitimized while the status of marginalized Indigenous people remains unchanged. The voices in the Downtown Eastside who can speak most accurately to the brutality of police neglect and those in northern BC who know intimately the daily realities of erasure, have largely been sidelined in the development of this national discourse. I would argue that this silencing is central to maintaining the naturalization of Canada’s colonialscape, and thus we must be attuned to how discourses of violence are connected to the material realities which sustain this violence. As a federally recognized and federally funded organization, NWAC’s powerpoint presentations, handouts and reports lead to more appeals for funding for their own efforts, without benefiting the individual Indigenous people and communities who continue to face ongoing violence. As I will discuss in chapter 5, however, this increased recognition has also entailed shifts at a community level which some technicians see as providing more hopeful avenues for lessening violence.

I now turn my discussion to the death of another DTES resident that has gained public visibility in recent years, that of Frank Paul whose life was largely lived beyond the
concern of the Canadian public until his mistreatment by police was caught on tape. In the following section, I trace the efforts to gain ‘justice’ for the police’s callous neglect of Paul which contributed to his death, the public inquiry through which his case was analyzed, and the impact of this social and legal recognition of his dehumanization.

4.2 Frank Paul: a death dragged into the light

What might have been an unremarkable end for Frank Paul was raised into public view because of two key factors: police videotapes captured him being dragged soaking wet out of the jail to be dropped off in the alley in which he later died, and an inquiry into the police and Crown handling of his death received national attention. Frank Paul, a 47-year-old Mi’kmaw man who died of hypothermia in 1998, had lived in the Downtown Eastside for many years and was well known among service providers and police in the area. Paul utilized a range of the services available to him, and sought medical care and social assistance regularly. Paul was brought into police custody after being arrested for public intoxication and although he was unconscious and unable to walk, a police officer was instructed by his senior supervisor not to put him in the drunk tank, but instead to drop Paul off in an alley that he was alleged to frequent. The decisions and subsequent actions of these two technicians of Canadian law resulted in Frank Paul being left in the alley at 9pm December 5, where he was found dead early the following morning.

The truth about Paul’s death was not immediately apparent to the service providers who saw him regularly, nor to his family and community members from the Big Cover Band in what is now called Elsipogtog, New Brunswick. In fact, family members were not told of his death until more than a year later when his still-wet clothes were mailed to them after sitting in a plastic bag in storage. They reported being told that Frank Paul had died of a hit and run accident (BC Civil Liberties Association 2008) rather than being told he had died just after being released from police custody while unconscious.
Appealing to accountability mechanisms of Canadian law, Paul’s family and Indigenous leaders called for an inquiry into his death and the subsequent police and Crown handling of the case. Paul’s death was made more publicly visible through the work of Pivot Legal Society and other organizations that were calling for a larger investigation into police misconduct in Vancouver, including charges of assault, excessive force and deaths in custody. The call for an inquiry also led to increased dialogue within Vancouver’s Indigenous community on the deaths of Indigenous people in police custody, the racist actions of police officers, and the need for civilian oversight of police conduct. For example, a daylong forum was held at the Vancouver Aboriginal Friendship Center in October 2007, just prior to the start of the inquiry (United Native Nations 2007). Even technicians operating within Canadian law saw the need for further investigation into the handling of Paul’s death. In 2004, the BC police complaint commissioner recommended a public inquiry into the case, but this was rejected by then-attorney general Geoff Plant. A Vancouver Working Group on Aboriginal Deaths in Custody, headed by Christine Smith-Parnell, a Haida-Tsimshian activist, began investigating two dozen cases of suspicious deaths of native people in police custody across BC, some going back more than 30 years (Pablo 2007). The group hoped that a public inquiry into Paul’s death could lead to a review of other cases in which native people had died in police custody. Smith-Parnell said that the fact that police accountability relies on police investigating themselves “makes it hard for us to trust that they’re not watching out for each other” (Pablo 2007).

In February 2007, the BC Liberal government finally gave in to calls to review the case (Pablo 2007). One of the official rationales for the public inquiry cited in police commissioner Ryneveld’s ‘reasons for decision’ was the efforts of the province of Saskatchewan to do the same in the case of four Indigenous people who froze to death, and another who almost died, after being taken in to police custody over a 13-year period. The term “starlight tours” was coined to name this practice of Saskatchewan

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In 2002, Pivot Legal Society began collecting affidavits from people in the Downtown Eastside about their experiences with the Vancouver Police, forming the basis of the report *To Serve and Protect*. The report sparked an audit of the police complaints process in BC, and in 2007, the Vancouver Police Department’s new chief formally apologized to residents of the Downtown Eastside, outlining policy changes that resulted from Pivot’s complaints (Pivot 2013).
police driving intoxicated Indigenous people out of town and leaving them to die (Comack 2012). The transference of these internal pressures for accountability within the Saskatchewan police department to the Paul case in BC hints at possibilities for shifting norms within systems of law and governance by making changes in one jurisdiction that then cause a ripple effect in other aspects of the system. Although the decision to hold the inquiry may be seen as a victory in and of itself because it speaks to the recognition of possible wrongdoing, the inquiry process did not necessarily result in changes in the kind of legal subjects produced through spatio-legal relations of the colonialscape. That is, it did not necessarily change the way men like Frank Paul are treated by police and Canadian society.

A commission was struck in March 2007 to report on the circumstances of Frank Paul’s death and the official response to his death. An initial report “Alone and Cold: the Davies Commission Inquiry into the Death of Frank Paul” was submitted in February 2009. The inquiry’s findings left unanswered questions about Crown and police conduct in the case, and Paul’s family and others spoke out about the inadequacy of the findings. In 2010 another inquiry into the actions of the Crown prosecutors was launched to investigate whether the prosecutor’s close working relationship with police was a conflict of interest in the case. Submissions to the Inquiry from the BC Civil Liberties Association reflect how Paul was categorized as an Indigenous man living in the Downtown Eastside, as the Commission of Inquiry “represents a rare opportunity, by focusing a prism on the life and death of one of society’s most disenfranchised, Mr. Frank Paul, to effect positive change for the unfortunately very many souls like him who continue to live among us. As a society, we must find a way to extend a far greater degree of dignity and humanity than that which was afforded to Frank Paul” (BC Civil Liberties Association 2008).

The second report with findings on the response of the Criminal Justice Branch, “Alone and Cold: criminal justice branch response” was released on May 19, 2011, more than ten years after Paul’s death. The two officers involved in the case were never charged and the 2011 inquiry report absolved Crown prosecutors of bias and improper conduct for their decision to not lay charges against the police officers who dragged Paul into the alley before his death. The Commissioner’s findings stated: “Although I make several criticisms of, and suggestions for, improvement in the Branch’s policies and
procedures in this report, I am satisfied that there is no basis for any suggestion that the prosecutors in the Frank Paul case conducted themselves improperly when considering whether to charge the police officers” (Davies Commission 2011, 3). Indigenous leaders spoke out against the findings, saying the case was fraught with racism and ignorance (Lewis 2011). Despite the findings, Paul’s family and Indigenous leaders said that “the decade-long fight for justice in the Frank Paul case was a testament to the resolve and ongoing fight for dignity and respect of Aboriginal people” (Lewis 2011). Leaders spoke out about the lost opportunity to name racism and systemic disparity in the justice system, while others saw the legacy of the inquiry in a positive light. Cameron Ward, the lawyer representing the United Native Nations in the inquiry, said that the legacy of Frank Paul’s “sad and unhappy life and death” (CBC News website 2009) would act as a tipping point for the public’s lack of confidence with the police. A representative of the B.C. Civil Liberties Association saw Paul’s death as representing a contribution to police accountability (CBC News website 2009).

Yet the inquiry did succeed in making the life and death of Frank Paul more visible, as well as the way that mechanisms of police accountability work. The case received national attention because of the inquiry, although national newspaper reports reveal a focus on broad changes in police accountability and conflict of interest, rather than on the treatment of Indigenous men such as Frank Paul (Dhillon 2011). First Nations leaders responded to the interim inquiry findings with a call to charge the police officers who were found to have acted with callousness in their treatment of Paul, saying “This goes to the heart of our justice system – those tasked with enforcing the law cannot be seen to be above it” (First Nations Summit, Union of BC Indian Chiefs, BC Assembly of First Nations 2009). Focusing on the systemic failure to adequately treat homeless, mentally ill alcoholics, the inquiry leaves colonialism and racism out of view (Razack 2012) despite the calls from Indigenous leaders to examine the specificity of Frank Paul’s treatment as an Indigenous man. In this examination, the inquiry reproduces Paul’s vulnerability as inexplicable (Razack 2012) while, I would argue, also reproducing the colonial relations which underpin both Paul’s socio-legal position and the legal system itself. A tension exists, then in the ability of the inquiry to increase visibility and recognition of the violence against Frank Paul on one hand, while, on the other hand, being a legal mechanisms through which Paul and other Indigenous people
like him are represented as naturalized residents of ‘Indian space’. Although the inquiries in BC and Saskatchewan provided a platform for public dialogue about the mistreatment of Indigenous men by police in urban areas, they also reinforced that the police cannot be blamed for treating them as the ‘Indians’ they are.

Now, fifteen years after his death, the public memory of Frank Paul is beginning to fade. Although the case made visible the biased actions of individual police and the particular manifestation of these biases when it comes to native men, the lessons learned are already fading out of view. The findings of the inquiry have been generalized in public discourses about independent investigations of police misconduct and issues of conflict of interest, which have nothing to do with colonial power or racism. The public discourse resulting from the inquiry provided a way for issues of racism to be raised via media reports on the inquiry testimony, as news stories named Paul specifically as an Aboriginal man. However, the inquiry itself was still seen as having the capacity to address this racism, despite the fact that such inquiries are part of the same system of governance that is being investigated. The inquiry served as another mechanism through which law maintains its own power to reproduce the material realities of the colonialscape, as well as representing the violent outcomes of legal processes as naturalized.

In the end, the inquiry itself became a satisfactory outcome of Canadian justice being served, while ‘Indians’ remain situated on the outside and at a distance from systems of law. Working within the available legal classifications for the police and Crown’s conduct in the case, although the lack of care toward Paul was named, this lack of care was not deemed criminal in nature nor worthy of charges toward those involved. Further, despite the acknowledgement of the police officers’ callous neglect that led to Paul’s death, the images of Paul still worked to blame him, at least in part, for his own fate. Unable to stand or talk, Paul was portrayed as just another drunken ‘Indian’ living on the streets of Vancouver – arguably, an urban manifestation of the reserve. The unremarkable nature of violence in the lives of people like Paul surfaced momentarily in the footage of his being treated inhumanely by police. But this was not enough to sustain the visibility of this violence, for indeed it is part of the fabric of normative socio-legal relations in Canada. The remarkable thing here was not that the violence happened, but that it stood out enough for an inquiry to be held.
As I will discuss in the next section, an Indigenous legal technician who is positioned between Indigenous and Canadian systems of law has had some success in witnessing violence toward Indigenous children and youth over a sustained period. Arising from another inquiry into the deaths of Indigenous people in the custody of technicians of Canadian law (in this case, kids in government ‘care’), the Representative for Children and Youth has had been able to name the violence of law itself and expose the legal norms through which this violence is sustained. Perhaps some lessons can be learned for how such witnessing could have altered the underlying dehumanization of Frank Paul and others like him.

4.3 Exposing Government Harms: examining the ‘care’ of Indigenous children and youth

Despite the Canadian government’s acceptance of United Nations recommendations with regard to treatment of Indigenous peoples, the situation facing Indigenous children and youth in Canada has been identified as a human rights violation of ongoing concern (NYSHN and FNCSC 2012). In 2007, the Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society of Canada (FNCFCS) filed a human rights complaint against Aboriginal Affairs and Northern Development Canada (AANDC), alleging that the government has a longstanding pattern of providing inequitable funding, programs and policies for First Nations child welfare services on Indian reserves. The Canadian governments’ continued attempts to derail the hearings on legal technicalities has itself been identified as cause for international concern (NYSHN and FNCSC 2012).

Jurisdictional disputes over responsibilities to care for Indigenous children have been known to result in harm and even death, especially for children who live on Indian reserves. Debates between technicians of Canadian law serve to materialize the persistent gaps created by jurisdictional technicalities, which excuse the negligence of Indigenous children in explicitly legal terms. A child first approach called Jordan’s Principle was developed after a Cree child from Norway House Cree Nation in Manitoba
stayed in hospital for more than two years after being declared well enough to go home, simply due to disputes between provincial and federal governments over who should pay for his home care on a reserve. Jordan passed away at the age of 5, never having spent a day in his family home, resulting in the eventual passing of ‘Jordan’s Principle’ in the House of Commons in 2007. However, this principle has been unequally applied across Canada, as reflected in a recent report stating that only 5 of 13 provinces have introduced measures to implement this child first approach (Canadian Paediatric Society 2012). As seen in the previous two cases, of missing women and Frank Paul’s death, even when legal mechanisms of accountability acknowledge wrongdoing, the fact that these mechanisms were used can themselves be seen as proof of justice. Similarly in this case, although changes in legislation were made, they have failed to be implemented in a way that significantly impacts the quality of life of Indigenous children and youth. The violence of law is once again exposed as central to the maintenance of status quo in both the relations of the colonialscape and their representation as lawful.

Further, systemic poverty and structural inequalities continue to make it difficult for Indigenous children to stay with their families and communities, resulting in high rates of child apprehension into government ‘care’. This might be understood as a continuation of residential school policies in Canada, through which children were mandated to attend state and church-run schools away from their communities and families from 1920 until the last one closed in 1988. Under the guise of ‘educating’ Indigenous children in European worldviews and social norms, residential schools effectively halted intergenerational systems of caring for one another, passing on cultural knowledge and acculturating children within Indigenous systems of thought. The assimilationist nature of these policies are made clear in statements from Canadian government representatives such as Superintendent General Duncan Campbell Scott who was the head of Indian Affairs from 1913 to 1932: “Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, no Indian department, that is the whole object of this Bill” (qtd. in Haig-Brown 1988, 27). As these educational policies were mandatory,

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17 The education of Indigenous children and youth has been managed by the Indian Act since its establishment in 1876. However, attendance at federally-run schools was optional until revisions to the Indian Act in 1920 made attendance mandatory.
police, Indian agents and teachers worked together to enforce attendance of Indigenous children. Although many families and children resisted (Haig-Brown 1988), most Indigenous communities today live with the ongoing impacts of intergenerational attendance at these schools.

The interrelated Canadian systems of education, law and child welfare have worked together to displace Indigenous peoples’ ability to pass down Indigenous ways of governance and thought from one generation to the next. Individual agents within educational, legal and child welfare systems are often seen as working together within the powerful systems of colonial domination, such that social workers are today as much of a threat to Indigenous families as are police. In my work with Indigenous families across BC, the fear of child apprehension was frequently named as a reason why women chose not to call the police for help when they were facing violence within their home (Hunt 2007, 2006). Women often said that they would only call the police if the abuse was extreme to the extent that they feared for their life, or if they thought a child was going to be harmed. Otherwise, a phone call to the police was associated with the violence of removing their children from their home, as these systems are so closely intertwined and systems of child welfare regularly discriminate against Indigenous families. Indeed, the rationale behind residential school policies can be seen at work today in the extremely high rates of apprehension of Indigenous children in to a system which entails further harm not only to entire families and communities, but also to the individual children who are forced into that system by state agents. The high rates of child and youth suicide in Indigenous communities have been linked to these combined systems of criminalization and neglect which perpetuate the distancing of Indigenous children from their families, cultural practices and sense of wellbeing (Aboriginal Healing Foundation 2007; Chandler and Lalonde 2008).

The Ministry for Children and Family Development (MCFD) in British Columbia has a dismal record of taking care of Indigenous children. Overall, BC has the highest child poverty rate in all of Canada, with about one in seven children living in poverty (First Call 2012). For Indigenous children, MCFD’s work today is an extension of the history of residential school system and the ‘sixties scoop’ which saw thousands of Indigenous children displaced from their families and communities provincially and nationally. Approximately one in seven Indigenous children has been in care at some
point in their life, compared with less than one in fifty non-Indigenous children (Representative for Children and Youth 2007).

In 2005, Ted Hughes was appointed by the provincial government to review the BC child welfare and protection system, resulting in a 2006 report outlining 62 recommendations, including the creation of an independent office to monitor the provincial system (replacing a similar position that was eliminated in 2002). Hughes was called to conduct this investigation after public pressure resulting from a number of deaths of children receiving government services. At this time, the province was already in the process of transferring responsibility of Aboriginal child welfare to native agencies, but the need was highlighted by public awareness of the deaths of three Indigenous youth – Chassidy Whitford, Sherry Charlie and Savannah Hall – who were in receiving ministry services. In 2001, the provincial government had agreed to the creation of community based Aboriginal child welfare authorities following pressure to do so from Indigenous communities. However, the implementation of this plan was slow moving, as only two interim Aboriginal authorities had been established (MacDonald 2008)

In addition to calling for an independent monitoring system, the Hughes report recommended that the provincial government work with Indigenous communities to develop “a common vision” for a system of child welfare for Aboriginal children and youth. The report also recommended hiring more native staff into the existing provincial welfare system to gain credibility within the Aboriginal community. Hughes himself had previously served as chief land claims negotiator for First Nations on Vancouver Island and was a chief adjudicator of settlement claims related to residential schools.

In February 2007, Mary Ellen Turpel-Lafond, a Cree judge for the Saskatchewan provincial court, was appointed in the role of an independent monitor to MCFD for an initial 5-year term (which was extended in 2011) and legislation was passed to give her the authority to undertake this work. Turpel-Lafond was born on a Manitoba reserve to a Cree father and a Scottish mother, and has talked publicly about her own history of child abuse and her mother’s abuse at the hands of her father (Fowlie 2009). In discussing her violent upbringing, she has emphasized that her own story demonstrates that children can overcome family breakdown and childhood trauma, and lead healthy adult lives.
Although the Representative’s mandate was not exclusive to Indigenous children and youth, much of her work in subsequent years has highlighted the realities of native children. This office has investigated and reported on broad issues related to the care of children in BC, such as the impact of funding decisions (March 2012) on the ability of the province to fulfill its mandate. It has also provided a specific focus on Indigenous children, such as in a submission to the Truth and Reconciliation Commission of Canada called “Aboriginal Children: Human Rights as a Lens to Break the Intergenerational Legacy of Residential Schools” (Turpel-Lafond 2012a). In this report, Turpel-Lafond links her professional responsibilities with the personal history of her and her husband’s family, sharing how her children’s great, great-grandparents were the first recorded students at St. Michael’s Indian Residential School in Duck Lake, Saskatchewan. She strives to connect past residential school abuses with the need to deal with present traumas and reclaim a strong voice for affected families. In addition to these personal supports for families and individuals, the report recommends “a new approach in law and policy based on the rights of children, encompassing their individual and collective rights” (Turpel-Lafond 2012a, iv) including the rights to learn Indigenous culture, language and tradition. Turpel-Lafond frames reconciliation as truth-telling, as the process of reporting on the residential school era involves hearing the voices of residential school survivors and their families.

The Representative for Children and Youth has also reported on treatment of individual children in government care after they have surfaced into public view. The report “Who Protected Him? How BC’s Child Welfare System Failed One of Its Most Vulnerable Children” (2013) tells the story of a native child’s violent movement through the child welfare system, making recommendations as to how policy changes would help to avoid such treatment in future. The investigation was sparked by public outcry after the 11-year old was tasered by police – one of dozens of violent incidents reported to MCFD throughout the child’s short lifetime.

As a visible presence in the media, Turpel-Lafond has used her position to respond to efforts to address the wellbeing of Indigenous children and youth and to press for actual changes. Recently, she released a statement regarding a federal human rights tribunal on the welfare of First Nations children, urging the tribunal not to get bogged down in litigation but to consider the urgency of pressing needs for Indigenous
children today (Turpel-Lafond, 2012b). She has used the media to press for the release of documents from government offices, as well as continually naming the weaknesses and failures of the system, connecting the current situation of Indigenous children with the historical legacy of residential schools, particularly as the national truth and reconciliation process unfolds.

The Representative publicly criticizes the violence of the government's child welfare system, revealing its very real outcomes through naming specific children and bringing the realities of their lives into public view. Although the Representative’s office makes it possible for issues of child welfare to be made visible in the media and in legal proceedings, the findings have no enforcement mechanism. Turpell-Lafond’s form of advocacy within government and media, such as reports, press releases and media statements, have increased the ability to name the problems inherent in the child welfare system in BC but their effective changes in the lives of Aboriginal children has yet to be seen, as the rates of Aboriginal children in care and in poverty remain unchanged.

The move to delegated Aboriginal agencies is seen by many people as a recognition of Indigenous rights and the ability for Indigenous peoples to govern their own child welfare. However, this is not a parallel system founded in Indigenous systems of governance but is constructed within unequal power relations between MCFD and delegated agencies which must conform to Canadian standards. Within this arrangement, there is some flexibility for individual agencies to create solutions that fit for local Indigenous community realities but, as has been stated, the process of moving responsibility to delegated agencies has been very slow. The possibility for these agencies to significantly alter the ability of Indigenous families to keep their children in their own care, or the quality of life experienced by Indigenous children and youth across the province, is therefore limited by the continued production of colonialscape categories within this parallel system.

As the provincial government fails to address the inadequacies documented by Turpell-Lafond, she continues to be a relentless witness to the violence of state neglect of Indigenous children and youth. In November 2013, the Representative’s office released the report When Talk Trumped Service: a decade of lost opportunity for Aboriginal children and youth in B.C. The report states that the approximately $66 million
spent by MCFD over the past 10 years to improve the lives of Aboriginal children in care had failed to make any significant impact, as “there could not be a more confused, unstable and bizarre area of public policy than that which guides Aboriginal child and family services in B.C.” (4).

It is significant that an Indigenous woman is publicly representing the government’s lack of accountability in the area of child welfare in BC, particularly violence faced by Indigenous children and youth while ‘in care’. Turpel-Lafond’s voice provides an Indigenous perspective into the systemic failure to prevent violence against children and youth, and the pervasive gaps in the system. Her presence in the media serve as an example of an Indigenous woman standing up to the government, often in a confrontational manner, as she attempts to hold government offices accountable. As Turpel-Lafond herself has outlined, the systemic failure to prevent violence is, in part, due to the pervasive underlying factors of poverty, lack of resources, and many other manifestations of ongoing colonialism which cannot be addressed in isolation. Thus, she makes visible the interpersonal and systemic violence against Indigenous children and youth, connecting them to the broader dehumanization of Indigenous people. Turpel-Lafond, then, seems to be an example of an Indigenous legal technician who is making visible the violence of Canadian law while working in between Indigenous and Canadian systems of meaning. Although she continues to be a witness, the provincial and federal governments remain unaccountable to her recommendations, such that representatives of these systems purport to hear what she is saying, yet take no subsequent action. When viewed alongside government inaction and rationales, Turpel-Lafond’s work makes visible the mechanisms through which the colonialscape is reproduced and through which the deaths of individual children is rendered inconsequential to broader structures of power.

4.4 Questions arising from these cases

As I have recounted in this chapter, family and community members of Indigenous victims of violence have worked tirelessly to gain the attention of police, media and the public in seeking ‘justice’ for people who have been targeted by systemic
neglect and interpersonal violence. As visibility has been achieved, cases of violence have been scrutinized within public inquiries and become subject of great discussion and debate. Yet what has been accomplished in these efforts? As we look to the justice system for more inquiries, research and court cases, I can’t help but wonder if this is the right place to direct our energy. What does it do to us, as Indigenous people, to continue to appeal to a powerful system that ultimately works to maintain our position as colonial subjects? And what are the material outcomes of these moments of recognition that have been described here? In the daily lives of Indigenous people and communities across BC, have these examples in which violence has, at last, become visible, resulted in any change? Rather than looking to government statistics or scholarship for answers, I will next discuss the observations of Indigenous legal technicians who have been working, as I have, to address violence in communities across this province for many years. Their insights point to both the potential, and the limitations, of addressing violence within the normative channels of Canadian law.
5. What Does Legal and Social Recognition Achieve?: Analysis from Indigenous Legal Technicians

Teaching young women to defend themselves is important, but it’s not what needs to change. What needs to change is the communities themselves. And not even the communities, the larger systems, right? If we really wanted to address violence against women we would do it at a systemic level and that would make the individual lives of girls much better so that hopefully they wouldn’t have to learn how to gouge somebody’s eyes out. (Helen)

In this section, I summarize the interview participants’ perspectives on engagements with Canadian law and its ability to recognize and respond to violence. I ask what changes have resulted from the cases outlined in the previous chapters, which rose to visibility over the past 15 years. The analysis presented here arises from differing degrees of closeness to systems of Canadian law and to legal technicians such as police, Crown counsel and social workers. Their stories reflect both the continued desire or push to find ‘justice’ within the Canadian legal system and the ongoing lack of faith or belief in that system. Overall, while many Indigenous legal technicians are working to create changes by strengthening relationships with police, increasing cross-cultural knowledge, or supporting victims of violence, everyone talked about the harms of the Canadian legal system as further victimizing people who have experienced violence. The violence of engaging with the criminal justice system was seen as integral to the continuum of violence experienced by Indigenous people, as well as its normalization. Thus, criminal law is central to the ongoing reproduction of the colonialscape in which Indigenous people can only be made visible as occupying spaces of naturalized violence.
Over the years of working between and across community, academic and activists spaces, I have gathered around many tables in diverse contexts with groups of people who are also concerned about violence – people who have been researching, educating and talking about violence for many years. As discourse around violence against Indigenous women has risen into favour via the cases explored in the previous chapter, I have increasingly found myself at conferences where I am the only Indigenous person in the room yet find many papers being presented on the plight of Indigenous women by non-Indigenous people who seek to be our allies. In the process of representing violence against Indigenous women, we are frequently reinscribed as victims within spatial relations which render women like me an impossibility. I am not the kind of Indigenous woman victim these experts have in mind – most importantly, I am not in need of their help, but can speak for myself. Further, I am interested in naming two vital components that generally go unnamed in normative mechanisms of visibility: colonial violence and Indigenous resistance. These remain out of view within the discourses of violence that have arisen in recent years, and, as I will explore in more depth below, I fear that all the effort we have put in to achieving recognition of violence has only reinforced our colonial subjectivity. That is, we are still easily represented as savages in need of saving by others. Even when we try to speak out, as I do, our voices cannot be heard because the available categories do not allow for it.

Reflecting on the three cases of violence discussed in the previous section, then, I wonder if the only way Indigenous people can be made visible or recognized within Canadian law is as ‘Indians’. Efforts to seek justice for individual acts of violence reaffirm our position as being in need of government ‘care’ or ‘protection’ as inherently vulnerable subjects, while the process of seeking ‘justice’ within that system only reinforces our vulnerability as colonial subjects. This analysis will then lead in to looking at efforts to seek recognition of violence, and change norms around violence, within the more intimate scales of Indigenous law in the next section.
5.1 Impacts of increased visibility

I haven’t heard that there’s been great change [in levels of violence] but I think what has changed is more wondering. And I think that what has emerged is hearing the information with a spirit of curiosity as opposed to hearing the information with a spirit of judgment. (Shelley)

In the interviews, I asked what, if any, changes the Indigenous legal technicians had seen in their years of working on issues of violence in BC, especially given the heightened visibility of the three cases I have outlined here. The resulting discussion included the following reflections on the outcomes of this increased visibility: changes in levels of violence, the ability to name violence, naming becoming a substitute for action, changes in legal responses to violence, blaming the victim and distracting from real issues. The technicians expressed hope that communities who have been engaged in education about violence now have an increased ability to identify and name violence in their own lives. Yet many people also expressed dismay that all of this talk has not led to any substantive changes in the levels of violence, and in fact, talking about violence has become the end point of government responses to calls for action. Efforts to address violence have thus largely failed to address the underlying socio-legal power relations of colonialism, as they remain bounded within the imaginary of the colonialscape.

5.1.1 Changes in levels of violence

Not one person reported noticing a change in the levels of interpersonal violence faced by Indigenous people and communities. Although some participants noted changes in other areas, the persistent nature of a range of physical and sexual violence remains steadfast in the lives of native people in BC. This reality is reflected in the lack of changes in the rates of violence reported in Canadian national statistical data, as discussed in the rationale for this research. For the research participants and myself, this is a disheartening reality, as our years of work to address violence has failed to change the brutality in our families and communities: “Part of me sort of feels sad because I don’t think we’ve moved a whole lot. There’s still violence against women, you know. So sitting back at my age of 51, going wow, we haven’t really moved a whole lot. Our
responses haven't really changed. Women are still getting killed. We had a murder on the reserve two weekends ago." (Linda).

Linda went on to name a number of other recent incidents of violence, including the stabbing death of her nephew by a childhood friend during the previous summer, and several drunk driving accidents, as well as the ongoing prevalence of unreported domestic abuse. As she talked about the various incidents of violence, Linda began to realize the extent to which she had come to see the violence as normal:

I guess what I could say is this: they don’t call the band office and threaten to shoot people anymore. Okay? So we don’t have a whole lot of that going on. But we still have violence. They’re less likely to come [to the band office]. Mind you, two years ago a band member was going to blow up the daycare below and the daycare got evacuated. So, I don’t know, do we normalize it? I’m thinking if I started saying this stuff outside of the community, they’d probably be like...what? So we tend to normalize it too. (Linda)

So although participants described changes in a number of other areas, as I will discuss below, the persistent nature of relationship violence, family violence and sexual abuse were an ongoing concern for most respondents. The gendered power dynamics in the governance of reserves, and patriarchal relations shaping responses to violence in Canadian society, were seen as underlying conditions of this violence.

5.1.2 Changes in ability to name violence

The technicians documented changes in other areas, providing some hope for those of us doing anti-violence work. Overall, there was consensus that Indigenous communities now have a strengthened ability to name and talk about violence at a local level. Shelley has worked for many years to increase the ability of Indigenous communities to name violence, and said that she has seen evidence of these shifts over her long-term work to support these changes.

I think there’s been incredible changes. When I first started going into communities, which doesn’t feel like that many years ago but was in fact that many years ago, I would say that our communities’ understanding of violence was so vague. It was so vague. I would often start, if I was doing a community awareness workshop, one of my first questions as we got in to the content of violence in the
workshop, I would ask the community ‘when you think about the word violence, what would that make you think?’ That was a common question I would ask because I was very curious about their awareness level. And the responses that I got back would be a brainstorm of the types of physical abuse, you know: slapping, hitting. Literally people would go in to a barrage of types of physical abuse. And I thought, wow, okay, so that’s where we’re at. So when you think about violence, you think about types of physical abuse. (Shelley)

Shelley’s work has involved providing communities with an understanding of the context of violence through talking about the impact of residential schools and other tools of colonialism as integral to today’s realities of violence. Now that communities and broader society have more ability to acknowledge the links between this history and intergenerational violence, the ability to identify and name interpersonal violence has increased. Shelley also said it is encouraging that native people are now more willing to say that they don’t trust the police and are honest about the fact that they wouldn’t call police when violence happens. This is also a sign that norms are slowly shifting, as this reality would not have been named fifteen years ago. So for communities who have engaged in specific targeted educational training or workshops around violence, the ability to name the issues surrounding violence has steadily worked to denormalize violence among those community members. “Our communities are very authentic in their dark realities and in their desire for change. As people, that is incredible leadership when you can understand that it’s okay to be transparent in these things and the transparency will lead the way to light.” (Shelley)

Additionally, Indigenous leaders were said to have an increased ability to name violence as an important socio-political issue in communities in BC. Barb said that in her work talking about violence across the province, she has seen a great improvement in Indigenous leaders discussing violence at provincial and national tables. As a survivor of violence herself, Barb saw parallels between her own process of naming violence and the provincial and national process of recognition saying that it took her twenty years after fleeing her abusive relationship to begin to publicly identify as a survivor of abuse. Similarly, she said that it may take a generation for laws and policies about violence to begin to reflect what is already known at community and individual levels.

Despite these significant improvements in the ability to talk about violence, most respondents also agreed that violence continues to go under-reported and unnamed,
especially in small, rural and reserve communities. As Linda said, whether it's domestic abuse, male violence toward another male, female violence toward another female, unless there is serious bodily harm, the police are not called: “So-and-so took a licking Saturday night. Everyone knows that, right? And I don’t often hear of the police being called.” Natalie described the prevalent nature of violence and its silencing, saying “everyone knows and no one knows”.

In talking about the role of herself and others in being witness to violence and naming violence, Natalie critiqued individuals whose silent witnessing continues to perpetuate the normalization of violence:

So I guess it’s back to that silent witness. If we really interrogate witnessing, I think there’s that person who knows but does nothing, it’s that greater harm, right? So there’s witnessing in the good meaning that’s helping, but what’s that word – the bystander. Sometimes when I worked with a family, it would almost feel like they were more upset with their mother who knew but did nothing than with the actual offender. And I think we could probably use that analogy for the structural systems – the police, the school counsellor or social worker who did nothing. If I only had a dollar for every kid who told me they told a school counsellor who did nothing. (Natalie)

5.1.3 Naming as a substitute for action

The increased ability to name violence was considered important progress by many technicians, yet it is also seen as having significant limitations. Some technicians warned that naming violence can be seen as a substitute for action, and can, in fact, work against efforts to address the root causes of violence. The increased visibility of violence in public discussion and government policies and programs have given the impression that something is being done to change violence itself. For some, efforts of visibility have come to feel meaningless. “How many more marches can we go on? How many more reports can we write? How many more research things can we do? We know the statistics and it’s not just Indigenous people that are aware from first hand experience. Politicians know the statistics. Researchers know the statistics. We all know what’s happening. And if we really truly wanted to address it, we wouldn’t just go march about it.” (Helen).
Many technicians, like Natalie, Lisa and myself, who have worked with and for government ministries to address violence have begun to see that government efforts to produce another research report or put out $5000 project grants to address violence is often the endpoint of efforts in this area. Natalie sees this as ‘the new neo-colonialism’, saying, “we can say the right things and tick off the right boxes and say we’ve done it. And then we don’t have to address, really what’s going on, really talk about racism, really talk about violence.” Natalie said that naming and talking about trauma is sometimes troubling, rather than reassuring to her, when it comes from government and other powerful institutions who are failing to change the conditions that make Indigenous people vulnerable to violence itself. One example was of a government grant of $6000 to provide “healing for Aboriginal girls and women, spaces to talk about violence and abuse”, taking up the language of resistance and healing themselves. We should be suspicious, perhaps, when even resistance becomes part of government rhetoric. Natalie likened this government naming of violence, void of meaningful actions associated with changing levels of interpersonal violence, as similar to the ways violence is normalized within a family, saying, “well, it’s like I disclosed at age nine and [I was asked] ‘do you want a lock on the door?’ and then the abuse doesn’t stop. To me, that’s the story still. It’s exactly that. It’s acknowledged, believed, and then nothing changes.”

This caution against the potential harms of naming violence within ongoing colonial power relations was echoed by other technicians, such as Clarie who has worked as a counsellor with children and youth for many years. These technicians work closely with individuals who have experienced abuse and violence, so are informed about the disconnect between changing government policies or rhetoric, and persistent realities of violence in the lives of their clients. Clarie said:

It feels like we’re going backwards in trying to address the issues. It’s almost like there’s an acceptance that we’ve reached equality and that no more work has to be done. And when we look at the violence that is happening to women and children and marginalized people, the layers of oppression that still exist, it seems like we’re not adequately responding to it even though we have all this knowledge of what is contributing to it. And I think that’s one of the pieces, and maybe I’m cynical because of the work that I do, but it’s what we’re bearing witness to. And how the systems continue to perpetuate that violence, just in a different way. (Clarie)
Although some hope was seen in naming violence at national and international levels, such as at the United Nations or other ways that shame the Canadian government, the hope is contingent on this visibility leading to action. The response can’t only be in words but must translate in to a change in actions, in the material realities of Indigenous peoples lives. Otherwise, as Natalie cautions, it is the same as disclosing abuse and then having to “go to all the Christmas parties and pretend the person isn’t in the room. It’s a continued enactment of ‘there, there. We gave you your day or whatever so why can’t you just get over it.’ It’s the same kind of approach”. Natalie thus succinctly connects the levels of interpersonal and colonial power relations, seeing the government-designated National Aboriginal Day as just another way to cover up realities of colonialism. The same socio-legal categories are at work in both examples, as the interpersonal and broad societal manifestations of colonial violence reproduce the same foundational power relations.

Additionally, when individuals do speak out about the violence they’re facing and seek support, resources are often scarce. The capacity of First Nations communities, particularly rural communities, to address violence was a common theme in the interviews. The increased ability to name and identify violence will fail to change realities of violence unless resources are put in place to actually do something to support victims after they report. Even those individuals whose work specifically focuses on violence and law face these gaps when they try to seek support for violence in their own lives, as illustrated by Linda’s example:

I had an incident where I was threatened and harassed and now there’s a peace bond in place - it’s another band member. You know, I asked this organization to assist me and they didn’t know what to do. It was very poorly handled, very poorly handled, from a safety point of view. And I thought, okay, well when I get shot going out the back door tonight remember that I spoke up and I put it on the record. So when it happens, you live with it. (Linda).

Many communities are in a similar position of needing to increase their capacity to respond to violence, especially now that initiatives are underway to try to encourage people to speak out and report abuse. As will be discussed in the next chapter, this gap is in some way being addressed through expressions of Indigenous law rather than relying solely on government-funded resources.
5.1.4 Changes in legal system response

Although a number of the Indigenous legal technicians work closely with police and other representatives of Canadian law, overall they saw that Indigenous people are still not likely to see the police as people who would help them when violence occurs. Some people are investing time and energy in to developing greater understanding of Indigenous issues among police officers, and insist that working with police is necessary if individual officers are going to become less violent towards native people. This, says Shelley, is part of a holistic community approach to addressing violence, given that the Canadian justice system isn't going anywhere: “In order for us to really create change, one thing that we need to do is we need to learn to work together. And that means that everyone needs to be sitting at the table. And one thing that I can actually share is that, like I'll state it, I'll say 'I'm not asking you to like who's sitting at the table. I'm asking you to work with them.'” Shelley said that in her work, the justice system is the only one which has implemented policies to name and address the violence their own members have perpetrated against native communities. Education and social welfare systems have, thus far, not integrated awareness raising in the same way. The Red Cross has a national Memorandum of Understanding (MOU) that two police officers will be paid to attend each RespectED training alongside members of Indigenous communities in order to foster understanding and relationship building. So changes are happening slowly, from Shelley’s perspective, yet she continues to hear that violence or abuse is reported to police and although a 24-hour response protocol is in place, a week can go by without a response. “All I can do is bring it up in the next meeting I’m in with RCMP sergeants. There are still too many of those examples.” (Shelley).

5.1.5 Blaming the victim

As a result of increased visibility of specific cases of violence, particularly against girls and women, the stigma of the violence has only been reinforced in some communities. Rather than offenders becoming associated with the violence, victims often face further stigma and shame, particularly if the offender is non-Indigenous: “That’s a contributing reason that many women don’t talk about some of the things that are happening to them, right? Because of the perceptions that people are going to get of them as an individual.” (Barb). Given the colonial categorizations of ‘Indians’ as
inherently violent and inherently violable, reporting violence serves to reinforce already existent stereotypes. Indigenous legal technicians said that representations of victims as themselves criminals (such as in the mug shots used on the posters of missing and murdered women) and the association of violence against women with sex work have served to create a singular type of victim who can be blamed, in part, for the violence against her.

The highway of tears, for example, is often associated with violence against sex workers in Vancouver’s Downtown Eastside. Yet local advocates continue to remind us that most of the victims were not in the sex trade but were hitchhiking as an everyday reality of living in an isolated part of northern BC. Indeed, the equation of hitchhiking with violence and sex work has pushed the underlying issues of isolation and poverty outside conversations about violence. When local issues are discussed, the focus on hitchhiking rather than the reasons that lead northern residents to hitchhike also serve to emphasize the actions of individuals rather than systemic gaps. “What I see happening is just that sense of being dismissive about those women, their lives. The response was that we focused on some of those women’s behaviors of hitchhiking and made that the focus instead of male behavior towards women, and specifically First Nations women.” (Clarie)

5.1.6 Distracting from the real issues

Further, media coverage and public discourse about the missing women has served, in many cases, to mask the real issues that contribute to Indigenous peoples’ heightened risk of violence. Although the media coverage of the highway of tears brought attention to the numbers of girls and women who had gone missing or been killed along the highway, the coverage still largely focused on the white tree planter whose disappearance had sparked the coverage: “I think about the level of publicity that was received when the one young woman who was a tree planter that went missing, you know, I think most people know that situation. Most people did not know the history already of the women who had been missing and murdered unless you work in this field. People didn’t know the extent of what that truly looked like.” (Clarie) Because of the publicity surrounding Nicole Hoar’s disappearance while hitchhiking, the attention continued to focus on hitchhiking as the problem rather than pervasive violence against women and girls. While ‘bandaid solutions’ (if that) were initiated following Nicole Hoar’s
disappearance, such as putting up a billboard telling girls not to hitchhike, the broader underlying issues of poverty, isolation, and lack of resources were never addressed. The Indigenous legal technicians working in Prince George talked about the reality that people still hitchhike along Highway 16 because they have no other option. The stories of women hitchhiking in to town for breast cancer treatment or to attend a court date or go to the doctor are not seen as related to ‘the missing women’ because these cases are not been made visible in the media. Rather, media representations have made only one type of victim visible – poor, ‘at-risk’ young girls who are likely addicted to drugs and alcohol, and/or working in the sex trade.

Clarie recalled the story of a 78-year-old native woman who had hitchhiked in to town for a court date, only to find that the date had been changed. Clarie defined this as negligence of the legal system as violence in itself, as this elderly woman was respected in her home community, but was overlooked by representatives of the legal system. These stories which reflect the real, daily reasons why people hitchhike are simply not heard and the distances people have to travel in the north are not understood. Some of the Indigenous legal technicians I interviewed said that they worked with people who had to travel up to 10 hours along a logging road to access services in Prince George. Advocates working in the area continue to question what free transportation would cost in the north, saying the cost of a life is clearly not enough to spark change. Inadequate and nonexistent transportation remains one of the material contributors to violence in the north, though it rarely receives the attention it deserves when cases of disappearance or murder are discussed.

5.1.7 Forms of violence kept silent

Despite efforts to redefine, name and make visible various forms of violence in Indigenous peoples’ lives, I also asked participants if there were any forms of violence that are still not talked about. I was curious to know if, even at the level of interpersonal dialogue, or within individual communities, some types of violence were happening but still not being named.

A number of technicians said that lateral violence was widespread but not acknowledged. Within Indigenous communities, lateral violence is understood as an
outcome of colonialism: “Lateral Violence occurs within marginalized groups where members strike out at each other as a result of being oppressed. The oppressed become the oppressors of themselves and each other. Common behaviours that prevent positive change from occurring include gossiping, bullying, finger-pointing, backstabbing and shunning” (Kwéy̨kway Consulting 2013). This might be understood as a way in which Indigenous people become active in reproducing colonial power dynamics, which are stratified within a gendered hierarchy, as they take up roles within state-defined systems of governance. Culturally-defined principles of respect or power within individual Indigenous legal traditions can become obscured as individuals become oriented toward Western principles of power. This finding points to the importance of recognizing that both Indigenous and non-Indigenous people can become technicians of legal violence within ongoing neo-colonial relations. In some communities, lateral violence intensified or was linked to the visibility of other forms of violence within Canadian law and society. For example, as funding became available to address the issue of missing and murdered girls and women, organizations began claiming the issue as ‘theirs’ or populations of girls deemed ‘at risk’ as ‘theirs’. This issue was visible in both small communities and large cities, and was not unique to any one community. This fight over jurisdiction entailed pitting organizations and employees of those organizations against one another, as well as going behind other peoples’ backs to undermine their work: “The people that are supposed to be the voices for the victims and for our communities are the ones that are actually - they manipulate, they intimidate. How do you get around that?” (participant). Within and between organizations, lateral violence also manifests in struggles for power or control, or otherwise unhealthy competitive behavior. Some technicians said that this violence was not in keeping with Indigenous principles of community and was a direct result of internalized colonialism.

Additionally, the violence of powerful leaders remains difficult to raise across most community contexts. Although some people discussed the violence of police or racial profiling by police, a number of people said that police violence is still something that is not being acknowledged, believed or accepted. In reserve communities, it is also still difficult to talk about violence perpetrated by people related to members of chief and council or those who are themselves elected chiefs and councillors. While there is increasing acknowledgement that violence from politically powerful individuals requires a
renewed sense of accountability, people still keep quiet about this type of violence due to the very real possibility that they might face backlash. New safety measures will need to be put in place before this issue can be addressed, in order to foster greater ability of victims to name violence at the hands of politically powerful figures.

5.2 Materializing colonial categories: engagements with Canadian legal technicians

The stories shared by the research participants illustrate the persistent nature of colonial categories through the actions of individual representatives of Canadian law, such as police officers, Crown counsel, and social workers. Many of the stories focused on Indigenous people’s efforts to try to gain legal recognition of interpersonal violence, but they also included everyday stories of coming in to contact with these legal technicians. Several technicians described being pulled in two directions, as they want to support punishing perpetrators of violence against Indigenous girls, women and children, yet also see how Indigenous men are beaten up in custody and have no recourse. The criminalization of Indigenous people is inherent to the normalization of violence against them, which, at the level of individual engagement with legal technicians, makes it difficult for people who are trying to work with police or within legal systems to create a more ‘just’ approach. Through individual interactions, the powerful nature of Canadian systems of law and governance in the lives of Indigenous people are perpetuated, materialized in the ongoing violence of daily life.

In Racialized Policing, Elizabeth Comack (2012) examines the role of police as “reproducers of order” in historical and contemporary Indigenous-state relations, arguing that their role is inherently one of reproducing colonial race relations. Despite its representation in public discourse or justice statistics, “crime” is not a static category but one that is socially constructed and performed by legal technicians. As the first point of contact with the criminal justice system, individual police officers play an important role in giving meaning to the categorization of “crime” through the criminalization of Indigenous people (Comack 2012). Criminalization, writes Comack, “involves
establishing a binary between ‘the criminal’ and ‘the law-abiding’. This dualism reinforces the view that those who are deemed to be criminal are not like ‘the rest of Us’ – not only in terms of what they have done but also who they are and the social spaces in which they move” (87). Having little faith in the impact of disadvantaged people making formal police complaints, or merely diversifying police forces to have greater Indigenous representation, Comack advocates the implementation of community policing, which is “decentralized and prevention-oriented” (277).

Below, I provide examples along a continuum of everyday engagement with police, dismissal of violence as not worthy of legal response, inaction when a legal response is sought, and the violent process of going through a court process in those cases where violence is recognized.

### 5.2.1 Everyday engagement with police

As individual Indigenous people engage with representatives of Canadian law such as police, judges and Crown counsel, their treatment often reflects the individuals’ underlying ideas about ‘Indians’ and their relationship to law. Within these interpersonal interactions, Indigenous peoples views of Canadian law are shaped, often affirming that they are not able to turn to this system, and its representatives, when interpersonal violence occurs. Although some Indigenous legal technicians work closely with police officers and find some benefit from creating better relationships with individual police, my questions about engagements with the legal system were generally responded to with examples of negative police interactions.

Natalie shared a story of her interactions with a police officer during a girls group session in the lower mainland. The girls went outside for some fresh air and returned a few minutes later in tears. They told Natalie that a police car was driving by and the police officer stopped and accused the girls of making pig noises. Natalie went outside to see what was going on, and the officer yelled at her to stop, saying she would charge her with jay walking. Natalie explained that she was a youth worker and was coming over to see what was going on. The officer said, “oh, I thought you were one of them,” to which Natalie replied, “I am one of them.” Natalie saw this as illustrative of how the police’s treatment of young women, especially Indigenous and racialized women, is
shaped by their assumed criminalization. Although Natalie told the officer that a number of young girls were being seriously harassed at the time, or had experienced violence, and Natalie was trying to build positive relationships between them and police, the officer did not seem interested in building good relations with the girls. Instead, the police officer called a number of the girls’ foster parents or caregivers, and a couple of placements broke down as a result.

Through this interaction, and others like it, the distinct roles of police officers as powerful agents of law and of Indigenous girls as criminalized are made real. Similarly, one of the participants talked about a situation in which her son was questioned about the death of a young woman, along with a number of other Indigenous men in the city where they live. As a result, the men who were questioned were put on the radar of police, even though they were only questioned as a result of racial profiling. She described how, as a native young man, her son was made hypervisible in this urban space, categorized automatically as a criminal.

I understand that [police questioning] has to happen but it often creates other victims, right? You become on the radar, if you’re an Aboriginal man. I remember this one time he and I were walking down the street, and we were going for lunch. We were just walking down the street, talking and laughing and stuff, and this RCMP car pulls up and these two RCMP members jump out and they say ‘against the wall’ and, there he is, you know, I’m standing there, they’ve got him up against the wall. He wasn’t doing anything, right? And [the police said] ‘we’re going to be in your face and you need to know that we’re watching you’….It kind of perpetuates that whole victimization and how other people then look at you even though you were just interviewed, you were a person of interest, you know. I mean all kinds of Aboriginal men were interviewed in the community. (Participant)

The naturalization of these socio-legal relations, and the criminalization of Indigenous men, becomes apparent when we consider that in both the cases of missing and murdered women in northern BC and in the Downtown Eastside of Vancouver, it is white men who have actually been convicted of targeted violence. The Judge Ramsay case in Prince George has not resulted in every older, grey haired white male being pushed up against the wall and harassed by police when they’re out for lunch. This case did not disrupt the categorization of white men as ‘good’.
5.2.2 Normalizing violence by not taking legal action

A range of other interpersonal engagements between Indigenous people and representatives of Canadian law demonstrated that even when Indigenous people turn to the legal system when violence happens, their treatment affirms the normalization of violence against them. Natalie talked about a young girl who was being horrifically harassed and when she reported the harassment to the police, she was told, “oh, you should be flattered you get that attention”. This normalization of violence was also discussed by a number of the Indigenous legal technicians through examples of people who reported violence to a school counsellor, family member, or other person in a position of power, only to have no response. Natalie said that most of the serious suicide attempts she has seen over her years of working with young women has been a result of not being listened to when they speak out about abuse. Similarly, Clarie said that a range of professionals, including doctors or teachers, are still not clear about their duty to report suspicions of child abuse. In one example, a doctor had seen genital warts on a young child – a clear indication of sexual abuse - yet didn’t report this.

5.2.3 Unequal treatment when reporting violence to police

A number of respondents discussed what happens when victims of interpersonal violence decide to go through legal channels to have that violence recognized. A young woman in Natalie’s girls group had disclosed violence to her family but no action had been taken, and the abuse continued. The girl then chose to disclose her abuse in the girls group, despite knowing she would likely have to go in to MCFD ‘care’. Natalie described the slow legal process that resulted, saying that it took several weeks before a police officer took a statement from the girl, and then only after Natalie and her colleague advocated for her repeatedly. Natalie saw this as clearly being a case where the slow process was due to the fact that the victim was Aboriginal, as a white girl at the same school made a disclosure of sexual abuse during the same week, and the police took a statement immediately. During her discussions with police and others involved in the case, Natalie heard excuses for why the girl was not being believed, including being bi-sexual (i.e. promiscuous), lying in order to get in to foster care, and possibly having a mental health problem. The girls’ mother, who refuted the abuse claims, was being supported by the Band social worker in calling the girl a liar. Additional jurisdictional
issues came in to play, as the reserve where the abuse took place had opted out of a tripartite agreement with RCMP and it was unclear who should take the statement.

After going through this slow legal process of trying to report the sexual abuse, the girl was put in to a white foster home away from the reserve. In the weeks that followed, she was sexually assaulted at a party. On and on it goes.

5.2.4 Revictimization in the court process

While Indigenous legal technicians often provide support for individuals engaging with systems of Canadian law, their work is shaped by the tension emerging from the violence of Canadian law itself. Natalie shared a story that illustrated her own shifting awareness about the violence of the legal system and the cost of seeking ‘justice’ for violence against Indigenous girls. While working as a counsellor, Sarah, a young Aboriginal girl, disclosed a very violent rape to Natalie, in which a gun was used and the young woman was kept in a room with another girl.

I remember thinking, ‘oh my god, this has to be reported. This man is really dangerous.’ And of course she was scared and I’ve always said, you know, ‘I’ll walk beside you, I’m not going to promise you anything, you know. It will probably get worse before it gets better.’ I always told the truth about the court system. But I don’t think I understood the degree to which it was flawed at that point. I had seen some pretty unjust things happen but probably the most unjust thing that happened was it turned out this man had done this with multiple young Aboriginal girls and he represented himself as his own lawyer. And so I went to court to support her, and he got to interrogate all these girls on the stand. And they were, you know, made to be drug addicts and all these dehumanizing things and no one stopped it. (Natalie).

Natalie described seeing the girls on the stand being cross-examined by both the offender and Crown counsel, whose questions were ‘equally traumatic’. They asked the young victims specific details about their bodies and the violence they experienced, including whether they had an orgasm during the sexual assault. Reflecting on the impact of the combined violence of the rape itself and being retraumatized in the court process, Natalie saw this as a turning point for Sarah, who started using hard drugs. It was also a turning point for Natalie’s view of violence and of law:
Looking back, I’m not sure to this day what would’ve been...you know because he was found to be a dangerous offender and was put away, and the law changed. [me: in that case?] in that case in itself. So never again can someone [be their own lawyer and cross examine witnesses they’re accused of sexually assaulting]. But at what cost? I would love to know of all those girls how many are dead. How many were further raped by the system, by what happened there? You know, so to me, my sense of justice, injustice, and my role of being a witness went from being a witness who had supported and walked beside trying to hold things, to being a witness who had witnessed something that I didn’t stop or couldn’t stop. I didn’t have anywhere to take that. (Natalie)

Natalie and others described the ways in which they came to understand the violence of law as integral to the interpersonal violence they witness in the lives of Indigenous people and communities. As with Sarah’s case, this legal violence is not only seen in the broad historical violence of colonialism, but also in the individual ways victims of interpersonal violence are treated as legal subjects when they seek recognition of violence against them in the criminal justice system.

5.3 Violence across reserve boundaries

Returning to earlier discussions of the colonialscape, the normalization of interpersonal violence can be seen as the continued realization of colonialscape logics. So how does the colonialscape manifest itself today in the treatment of violence in reserve and non-reserve spaces in BC? How do attitudes about violence and Indigenous people correspond to ideas about reserves as naturalized ‘Indian space’? I asked the interview participants several questions about their observations working between reserve and non-reserve spaces, including the ways they see the stigma of reserve life traveling with ‘Indians’ as they move throughout Canada and the distinct socio-legal relations of people living on reserve.

A number of Indigenous legal technicians expressed the view that reserves were spaces of neglect, and that this neglect was allowed to continue because they were perceived as “out of sight, out of mind” for the average Canadian. Residents of reserves are also out of sight, as the reality of daily life in these communities goes unseen.
Working with service providers in a number of sectors, the technicians said that most of their non-native colleagues have never set foot on an Indian reserve. The reserve can therefore easily be constructed as a scary, far off place beyond the bounds of society. Reserves may be physically very close to a city or town, or indeed within the boundaries of a city or town, but may conceptually be kept at a distance.

The Indigenous legal technicians described reserves as being very much shaped by racism, having few resources or services, which contributes to rates of violence. Services might be located just “across the river” (Linda), materially close by but conceptually at a great distance. Lisa conducted a questionnaire in a number of rural reserve communities in northern BC and found that 100% of respondents across all ages had experienced violence\(^\text{18}\). The capacity to address this violence is low in many communities, as mentoring and training is needed to put conflict resolution and violence prevention resources in place at a local level. Lisa described the poverty and nepotism on reserves, combined with matrimonial real property laws and lack of adequate housing, as “a formula for violence”. The nepotism Lisa spoke of emerges within band politics which can include elected band officials directing resources toward certain families and not others. During previous research (Hunt 2012, 2007, 2006), I similarly heard women talk about losing their jobs or housing after speaking out about violence perpetrated by someone related to members of chief and council. While rarely named publicly, this political power has a huge impact on the nature of violence on reserve.

Working with Indigenous families in child custody cases, Katrina observed that families living on reserve were at a great disadvantage because of the lack of resources in individual homes and in the surrounding community. Whereas native families who live in cities can access resources like counselling, food banks, community kitchens, or parenting classes to support their ability to care for their children, the same resources are not available on most reserves. Therefore Katrina observed that families living on reserves had much lower chances of keeping their children, not because they are bad parents but because the systemic supports simply do not exist. We know this has a long

\(^{18}\) Formal statistics are not available on the rates of crime on Indian reserves, as police do not keep track of on-reserve versus off-reserve crime rates. Additionally, we know that much violence goes unreported to police so anecdotal and community information provides a stronger picture of these realities.
term impact on families, as children in government ‘care’ experience poorer outcomes related to education, health and wellbeing than the general child and youth population (Representative for Children and Youth 2010) and are more likely to self-harm and to commit suicide (Representative for Children and Youth 2012).

On the other hand, Claire observed that when reserve residents travel into Prince George in order to access services like counselling that are not available on reserve, they face other challenges. She described women who have experienced violence traveling to the city to attend a court hearing about her case or to access supports, only to find herself outside of her comfort zone. In order to access these services, Indigenous women have to not only travel across geographic distances but also across cultural and social distances as well. Without the resources, knowledge and support to navigate their way through the city, the experience of accessing services or the courts can itself be retraumatizing.

The naturalization of ‘Indianness’ or colonial and racist ideas about Indigenous people contributes to the naturalization of violence by police officers, teachers, and others who work with people on reserve. One way this manifests is when police don’t respond to calls of violence taking place on a reserve because it is ‘just those Indians again’. Linda said that reserve residents joke that if you actually wanted the police to come to the reserve, you would be better to call in a drug bust than domestic assault because it would be taken more seriously. Reserve residents and people working on reserves also had knowledge that police were slow to respond to calls of violence on reserve. This, combined with the already complex relationships that Indigenous people have with police, made it unlikely that they would turn to the police if they actually needed help. Violence here is talked about as happenstance “In small communities, you get this message that you’re just supposed to live beside it. That everyone knows and no one does anything.”(Natalie). Through the course of the interviews, Linda and others realized how they themselves had become used to the pervasiveness of violence, as they named one example after another. After listing a number of incidents of violence and death on the TK’emlups reserve in the past few months, Linda said “yeah, I guess it is normalized. To anyone else, this would sound crazy.”
Natalie shared an interesting perspective on the spatialized nature of violence within rural areas and urban areas, observing that while the land may be a source of healing and wisdom, it is also a space where violence has historically occurred and is currently possible. Whereas violence in cities may occur on a particular corner or in a specific neighborhood, in rural reserve areas, violence more often takes place outside, in nature, or in places not marked by streets but by older frames of reference. In this way, Natalie said that violence is more likely to ‘happen anywhere’ in rural areas, making it difficult to avoid. In cities, on the other hand, people can sometimes strategically avoid particular neighborhoods, houses or areas that are known for violence.

However, when Indigenous people are outside reserve spaces, including within cities, they go from being ‘out of sight’ or invisible to being hyper visible due to being ‘out of place’. The technicians illustrated this experience with examples of racial profiling of Indigenous men who are regularly stopped by police for no reason. A number of native men who were questioned after the murders or disappearances of native girls and women along the Highway of Tears are now treated as suspicious by police in town. As a youth worker in Vancouver, I saw this hyper visibility with the Indigenous youth I worked with, who were regularly stopped by police while walking along Commercial Drive, especially when they were walking in groups. It was assumed they were in a gang or were otherwise criminalized by police, simply because they were a group of Indigenous teenagers walking or standing together. Racism manifests in cities in many other ways, including creating barriers to Indigenous youth finding jobs and housing in towns and cities throughout the province.

Whether invisible or hyper visible, the relationship to normalized violence remains constant, although justified through a different set of spatialized socio-legal relations. In this way, we might understand the stigma of the reserve as a space of normalized violence being carried with ‘Indians’ wherever they go within Canada. However, in the city it seems more likely that violence will be responded to quickly by police who see Indigenous people themselves as racialized criminals, whereas on reserve, police are less likely to act because the violence is part of the maintenance of reserves themselves.
5.4 Gaps, separations, distance of Western law

The analysis that Western law is spatialized or materialized through a series of categories (in chapter 3) was echoed in the respondents’ descriptions of how Indigenous people are treated by Canadian legal technicians, not only as offenders within the criminal justice system, but as they encounter a number of other governmental systems. These separations, based on individualized socio-legal categorizations, begin early in life for Indigenous people. Foundationally, Indigenous people are categorized as status Indians, Métis, or Inuit, or are denied Indian status or other statuses despite their Indigenous heritage. These categories then determine a whole wealth of factors in the lives and families of Indigenous peoples, from access to health care to housing to being flagged within the child welfare system.

For example, when Natalie was in the Women’s and Children’s Hospital giving birth to her twins, she was visited by a social worker because it was somehow flagged in the MCFD system that she was a single mother giving birth to status Indian children. Although Natalie was employed as a faculty member at Thompson Rivers University in the Department of Social Work at the time and had not actually done anything to warrant being flagged as an inadequate caregiver, the Indian status on the file for her children (due to the twins’ father being native – Natalie herself is Metis but does not have status) categorized her and her children as somehow ‘at risk’.

A number of the Indigenous legal technicians who work with youth described their early treatment by representatives of various legal and governmental systems as being central to their legal consciousness, and their lack of trust in or identification with the Canadian justice system. Linda described a recent situation in the Secwepemc community in which a teenage girl threw a phone at her mother and the police officer wanted it considered a violence offence, meaning the girl could face a custodial sentence (in youth detention). Linda saw this response as ridiculous, asking why a more appropriate response such as sending the family to counselling, wasn’t considered. Linda sarcastically replied, “Oh no, let’s label her an offender and send her to jail. Cause that’s going to help, right?” The police response of criminalizing the girl would distance
her from the people she potentially feels responsible to, and with whom she might be able to address the core issues of violence in her life and her family.

These examples reflect the ways in which powerful judges, Crown counsel, police and social workers make decisions at a distance from the reality of Indigenous peoples’ lives. As a victim of crime, all kinds of categorizations and policies are imposed on your reality which reshape the violence you experienced into something that can be handled by a system which has not necessarily been designed to account for your reality. Technicians described the impacts of being put in a totally powerless position as a victim of crime. Women and children experience their credibility being ripped apart by defense, which further erases their reality of having been violated. Clarie also described how individual judges have discretion on rape shield laws and the use of a screen to protect victims, rather than the victims or their advocates being able to choose these protections for themselves. “It’s no wonder kids don’t want to disclose being sexually assaulted, with all these examples of how the courts treat them” (Clarie).

A number of technicians brought up the ways in which Indigenous people learn at a young age not to trust the various representatives of the systems that shape their communities - primarily justice and child welfare. This early education in the harms of systemic power over the lives of individual Indigenous people, families and communities, is central to the low rates of reporting violence. In the absence of alternatives to a criminal justice response, many people feel they have no way to ask for help without causing further harm and compounding the already existing violence.

When you’re 5 years old and you’re seeing the violence, well, you’re going to pick up the phone, [and] all the things that you’re afraid of are going to happen. Your dad’s going to go away, your mom’s probably going to have to move, and geez, the Ministry will probably get involved and you’ll get put in to a foster home temporarily because she can’t stay away from your dad. Your whole world turns into chaos. When you’re 10 years old and 8 years old, you figure that out pretty quick and those calls aren’t made. Or you’re told not to make them. (Linda)

These relationships between systems of criminal law and child welfare are brought to bear in particularly powerful ways in the lives of Indigenous people, as was evident in the number of technicians who raised this issue. Katrina said that she
regularly hears women say they regret calling the police when a situation of violence occurs, because “if I hadn’t called the police that one time, I’d have my kids”. By following the rules of a system created at a distance from Indigenous peoples’ realities, individual legal actors have the power to make decisions far removed from their material outcomes. On the other hand, the Indigenous legal technicians I interviewed are all too familiar with their consequences.

Practically, turning to the law or to government systems for help just doesn’t make sense for some rural and isolated communities. Within BC, many First Nations reserves are at a distance from cities and towns where resources are located. Helen recalls living in a small community about an hour or more away from a town. “I would never fathom calling the police if I had a problem. And in my community, I was part of a first response team. We made sure that we took care of our community, to respond to it, because if you called the police or the ambulance for that matter, you’d be lucky if they showed up in an hour, two hours, or that day. So we had to figure out our own ways to respond to things.” (Helen)

5.5 What legal recognition really means

The value and purpose of gaining recognition of violence by police and other legal representatives was questioned by many of the legal technicians, given the limited positive impact this recognition has in the lives of Indigenous peoples’ experiences of violence and the multiple negative impacts it can have. The colonial nature of this recognition was named as well: “Do you want your chief and council to keep trying to find a so-called collaborative relationship with the state? For me, having an anti-colonial perspective, it feels like we were put into this position, we have been oppressed by this system and now we’re turning to our oppressors and trying to find a way to address issues within our communities and it doesn’t surprise me that it hasn’t been very effective.” (Helen)

Legal recognition involves taking up categories that already matter or that are pre-formed, and these categories operate within a system that is centered on offenders
rather than victims. Even ‘victim’ and ‘offender’ are legal categories which don’t work in communities where intergenerational abuse is prevalent, as many offenders are also victims. Creating new categories can be one strategy to influence the impact of socio-legal recognition, such as in the case of “the missing women”. Yet I have observed that these categories are themselves problematic, as Indigenous women and girls now only begin to count after they can be categorized as “missing”. The underlying colonial categories which marginalize Indigenous girls and women remain unchanged. Further, Natalie questioned what it means when the language of marginalized groups become recognized and then appropriated and embedded in government and legal language, such as she saw in recent funding calls which used the language of “resistance”. This language can then be systematized such that they become just another check box, which, according to Lisa, masks the need to create real change. In the case of the highway of tears, the government’s initiatives to address these issues are named as evidence of their commitment to address violence in the north, yet they are often not at all meaningful at the community level (such as small project grants or research projects).

Within this system, Lisa and I shared a similar experience of becoming part of this tick-box approach to addressing violence. As Indigenous consultants, we had been hired at different times to do research on best practices for working with victims of violence in rural and isolated Indigenous communities. Over the course of the interview, we realized that we had reproduced one another’s work, with several years between our efforts, and had both finished our contract wondering what would come of our reports. Since neither of us had any power to implement our research findings, we were concerned that the research itself would be held up as evidence of ‘action’ on the highway of tears or the need for different program models for rural Indigenous communities, while our recommendations for changes in policy and practice went unaddressed. Looking at the ministry website which lists the current service model and programs, our concerns about the lack of implementation of our findings are confirmed,
as programs for rural and isolated First Nations remain centralized within nearby cities and culturally-specific models are not offered\textsuperscript{19}.

5.6. What is law really about?

In general, the Indigenous legal technicians said very clearly that Canadian law is not about justice. In this discussion, focused on the daily lives of Indigenous people, law was equated with the criminal justice system yet was linked to broader socio-legal dynamics of colonialism. The crisis-oriented criminal justice system was described as a “cattle call”, a “revolving door” and even “a paramilitary organization”. Lisa went so far as to say she sees no benefits of engaging with the law when violence happens. Short of reshaping the whole legal system, Lisa and Natalie both expressed the view that whoever has the most power will be validated. As discussed in chapter 3, this certainly rings true for the way in which Canadian law was used to empower the removal of Indigenous people from their territories in order to clear land for settlers, who were afforded power according to their racial, class and gender categorizations in this system. Racism remains at the heart of the way the criminal justice system operates: “If you’re a First Nations person against a white person, your chances of winning are pretty damn slim” (Lisa). The power dynamics of the legal system were said to be mirrored within the education system, which also takes a punitive approach.

Further, within the individualized justice system, “it seems like the offenders have more rights than the victims.” (Clarie) In one example, a 17-year old man sexually assaulted his 12-year-old sister. Through the Young Offenders Act, the girl cannot be informed if her brother has been released back into her community. All Clarie can do is support the girl by putting a plan in place based on the assumption that he could be out of jail. “He is more protected than she is. You’re telling her maybe he could be here, and we should make a plan based on the possibility you might run into him, because he may

\textsuperscript{19} The Ministry of Justice provides a provincial directory of victim service and violence against women programs on their website. While this directory includes specific multicultural outreach service providers, no listings for Indigenous or remote programs are included. http://www.pssg.gov.bc.ca/victimservices/directory/index.htm
be here. Or not. His rights supersede hers even though his rights are a consequence of criminal behavior” (Clarie).

5.7 Strategic recognition

Over the course of the interviews, I noticed that the technicians working in close relationship to legal and government systems were more likely to see positive aspects of those systems. Obviously, this is in part because the individuals who work in systems of law (as lawyers, for example) do so because they see some meaning or hope in their ability to effect change. As one of three Indigenous lawyers working in family court in BC, Katrina felt that more Indigenous lawyers were needed.

Barb expressed the opinion that the creation of new laws and policies to address violence are a sign that national leaders see violence as an important issue. While failing to impact violence directly, this recognition raises the ability of leaders and community members to talk about violence, which she felt was a hopeful place to start. International recognition was similarly seen as strategically positive, as it creates pressure on Canadian officials to create change. Yet, those who saw the positive potential of this international pressure admitted there was no accountability in international law. On a practical level, other technicians said that when violence is very serious, some people feel they have no choice but to call the police. Calling on police to step in when violence occurs is, for some, the last strategy they will turn to.

5.8 Personal cost of working with/in formal legal systems

The participants described varying cost and benefits of working on issues of violence in relation to formal legal systems. Shelley described her longstanding work on violence as rewarding, as she has seen some changes in the actions of police and sees community level change resulting from her work across Canada. Others felt that systemic gaps were being filled by people like themselves who end up doing extra work above and beyond their formal roles. For example, Clarie provides education about the
court process for her clients because the program that used to provide court support was eliminated.

As a lawyer, Linda worked within the criminal justice system in a number of capacities, including representing offenders, before moving into her current position establishing the community court for the Secwepemc people. Reflecting on her work as a lawyer within the system, she said, “It killed me. And I had to get out of there because I felt like I was just part of that wheel and it was just killing my soul. It was just sucking it out of me. And I wasn’t doing anything for my community. Nothing other than helping them a little bit more through that process, and recognizing that process had to change somehow” (Linda). Linda went on to talk about her own recent experiences of speaking up about the violence she was facing in the community. She said she reported it not only to get help for herself but because it has to be okay to report it: “There’s a shame about it, as though we invited this into our lives.” (Linda).

Some Indigenous legal technicians questioned their work on violence and even saw themselves as contributing to false hope at the community level. Lisa asked, “why did I even bother?”, saying she believed her government contracts could lead to change and pumped the communities up but later realized “it was bullshit”. Putting her own relationships at stake, she felt like she had contributed to a false sense of hope by doing work for government offices. For one participant, the personal cost of working in relation to the justice system changed dramatically when she was arrested in a dispute with a neighbor over her dog. Having experienced the jail first hand, she said she now gets it “By the way, everybody in jail is Indian. Everybody, okay? I’m the whitest person there and I’m Métis. Everybody in the bail office is also Aboriginal.” With bruises all over her body after being pushed to the ground by a police officer, she was herself arrested for assaulting an officer (though the charges were later dropped). Seeing her husband, who is also Indigenous, engage with that system, she observed that it was assumed he had been arrested before “because he’s brown”. For this Indigenous legal technician, and for others who had either engaged with the justice system as victims or presumed offenders, the personal costs of engaging with systems of law and governance made clear the ongoing dynamics of colonial power.
5.9 Conclusion

These stories of everyday engagements with Canadian law in Indigenous communities across BC demonstrate the failure of recognition efforts to change the foundational power relations which continue to perpetuate law’s violence. The logics of the colonialscape facilitate the normalization of law’s inability to change material realities of violence in Indigenous peoples’ homes, families and communities, as legal efforts to seek ‘justice’ are of little consequence other than furthering frustration. Although Indigenous people continue to engage with Canadian law, including efforts to provide cross-cultural awareness and advocacy for Indigenous people, they generally see little hope in changing the foundational relations within which law derives its power. Through their stories, these witnesses have demonstrated some of the ways in which colonial categories remain active at an interpersonal level, as ‘Indians’ remain stuck in their portrayal as being of another time and place – the space of the reserve.

As these cases have demonstrated, mechanisms of Canadian law can appear to provide Indigenous people access to justice while simultaneously reproducing their categorization as ‘Indians’ who are inherently unable to access justice. At a material level, this means that as Canadian legal technicians such as police, lawyers and judges, as well as Canadian citizens, appear to be doing their job upholding the word of law, Indigenous people continue to be targeted for violence in spaces legally constituted through neglect. I suggest this is because Canadian criminal law works together with the Indian Act to reproduce the logics integral to the spatialization of colonial power. In their research on worker’s rights, Blomley and Bakan (1992) point out that the same logic that has been used to advocate for the rights of workers, insisting that health and safety are labor issues, has also been used to deny workers’ legal protection. Rights are thus shown to be applied differently according to how law shapes various social spaces, yet the Indigenous legal technicians also spoke of social spaces which are simultaneously shaped by the norms of Indigenous law, giving rise to distinct conceptualizations of rights and justice. In the next two chapters, I will explore some efforts being undertaken within Indigenous communities across BC to change norms around violence, which constitute Indigenous people as subjects of deeper territorial relations that cannot be captured by ontologies of Canadian law.
6. Creating Networks of Reciprocility: Measures to Redefine Violence

...fenced in and forced to give up everything that had meaning to [our] life....But under the long snows of despair the little spark of our ancient beliefs and pride kept glowing, just barely sometimes, waiting for a warm wind to blow that spark into flame again. (Crow Dog 1991, 6)

As I have shown in the previous section, efforts to gain recognition of violence against Indigenous people in BC have entailed further violence through engagements with the mechanisms of Canadian law itself. Even when recognition is achieved, the criminal justice system works to reproduce colonialscape logics which categorize Indigenous people as ‘Indians’ against whom violence is normalized. In light of this reality, Indigenous people are not just waiting around for a judge or police to stop violence in their lives. They have long been creating solutions that engage cultural teachings within local networks. In my interviews with Indigenous legal technicians, we discussed efforts to address various kinds of violence through measures that may not be visible within Canadian law nor broader society but that unfold at more intimate levels. In this chapter, I will explore these efforts to address violence, suggesting that these community, family and interpersonal initiatives might be understood as expressions of Indigenous law. I will discuss the nature and qualities of these initiatives, suggesting they form a countermeasure to the violence of Canadian law, instead providing possibilities for engagement of individual and collective Indigenous agency. The qualities of these measures will be further discussed in the next chapter, theorizing a pluralistic legal geography of Indigenous peoples in BC which suggests avenues for changing the normalization of violence against Indigenous people.

In this chapter, I first discuss the ways that Indigenous legal technicians define Indigenous law. I then suggest that the fundamental quality differentiating Indigenous legal measures from those of Canadian law is reciprocal responsibility enacted through a network of individuals. Within these networks, new categories of violence are being
created through diverse practices that the Indigenous legal technicians shared from their own experiences. Yet, some technicians warned that colonial categories can be reproduced within measures of Indigenous law, if they are not rooted in Indigenous ontologies and cultural identities. Discussion of these emergent networks provides the foundation for the next chapter in which qualities of Indigenous legal measures to address violence are further defined.

6.1 Defining Indigenous law

During the interviews I conducted for this research, I asked the participants for examples of community initiatives to address violence, as well as for examples of Indigenous law being used for this purpose. In answering these questions, I found that the participants had differing understandings of what ‘Indigenous law’ meant. A number of people talked about processes in which Indigenous legal methods or principles are used within the Canadian legal system, such as mediation, banning or shunning (with enforcement from Canadian court orders), community courts and sentencing circles. About half of the participants understood local level initiatives, such as coming of age ceremonies, gatherings to honor young women or collaborative problem solving, as examples of Indigenous law, while others did not necessarily see them as legal, but as social, in nature. During the course of the interviews, however, several people began to see community initiatives to change norms around violence as the development of new laws or legal orders. I see this as a significant outcome of this kind of research in which Indigenous people can share stories and make meaning with one another, as my own analysis of law and violence also had a reciprocal impact on the research participants, thereby enacting the principles of my witnessing methodology. As Hadley Louise Friedland (2009) writes in her research on Wetiko Legal Principles, “Indigenous law can be hard to see when we are used to seeing law as something the Canadian government or police make or do. Some people may even have been taught that Indigenous people did not have law before white people came here. This is a lie. Law can be found in how groups deal with safety, how they make decisions and solve problems together, and what we expect people ‘should’ do in certain situations (their obligations)” (15-16).
In my analysis, I understand all of these examples to be expressions of law—Indigenous (operating separately from Canadian law) or pluralistic (operating together with some involvement of Canadian legal technicians) in nature. I further acknowledge that each Indigenous nation has distinct forms of legal expression, and that urban Indigenous people are also creating new cultural expressions at a local level. I aim to show that different socio-legal categories of violence and of identity (or legal subjectivity) emerge within these legal practices, and that they are founded in a set of place-specific, relational principles that emerge not from the colonialscape, but the longstanding activation of Indigenous law. These processes serve to disrupt the logics of the Indian reserve, making violence something that is not normalized but is instead witnessed, walked beside, and problematized in its new categorizations. In using this definition of law, I draw on the perspective of socio-legal scholars that law is not a top-down system of universal rules, but legal systems are rather the product of sustained effort on the part of a number of actors (Napoleon 2009).

I thus understand this investigation of Indigenous law to be decolonial in nature. Decolonization does not mean "a total rejection of all theory or research or Western knowledge. Rather it is about centering our concerns and world views and then coming to know and understand theory and research from our own perspectives and for our own purposes" (Smith 1999, 39). This opens up an awareness of legal pluralism, which can combat the ideology of legal centralism that has impaired the consciousness of Indigenous law, drawing attention to dynamics between and across legal orders: “attention to the dialectic of state relations would ensure that both the internal and external interactions were brought into focus and that aboriginal people’s agency – historical and contemporary – was emphasized” (Napoleon 2009, 384).

Further, Napoleon (2010) explores customary law in considering the ability of Indigenous people to affect their own laws within broader political contexts. Napoleon sees the study of Indigenous traditions as an essential step in their revitalization, allowing nations to go beyond state-determined band governance to incorporate new scales of legality. Exploring possibilities of multijuridicialism, Borrows (2010) ultimately finds that Anishinabek law can best be protected under its own terms, arguing for Anishinabek law to work alongside the constitution. As Napoleon (2013) writes, rethinking Indigenous legal orders and law is fundamentally about rebuilding citizenship.
In remaking legal frameworks that can respond to present-day problems such as the prevalence of violence in our communities, Indigenous systems of law must be able to reflect the legal orders and laws of decentralized (non-state) Indigenous peoples allowing for the diverse ways that each culture is reflected in these legal orders. At question is how best to reconcile former decentralized legal orders and law with a centralized state and legal system which normalizes the violence of colonialscape logics: “Indigenous law is about building citizenship, responsibility and governance, challenging internal and external oppressions, safety and protection, lands and resources, and external political relations with other Indigenous peoples and the state” (Napoleon 2013, 230). Rather than thinking about how decentralized Indigenous legal orders can become more valid or gain more recognition within Canadian law, these interviews reveal the potential for changing new understandings of violence and new norms around violence at a local level with little or no state involvement. Instead, following Christie (2007), the onus is on the Canadian state to accommodate itself to community-driven projects of identity formation, justice and healing. As Chaw-win-is said, “Women are really concerned with healing our families. And I hate that word ‘healing’ but right now that’s the word that comes, but getting strong, strong minded, clear, confident in who we are, not allowing anyone else to tell us who we are. When that happens, we need to pull the family together.”

Individual Canadian legal technicians, such as police and judges, have a role in responding to, participating in, or supporting such community-driven work to revitalize Indigenous law. Comack (2012) advocates that principles of decentralized and prevention-oriented community policing can be part of broad community development geared toward enabling communities to become more self-sustaining, addressing violence and ‘crime’ in ways that make sense for each individual community or family. “In contrast to criminal justice strategies that focus on punishment, discipline and control, Aboriginal community development focuses on healing, wellness and capacity-building. Honoring Aboriginal traditions, values, and cultures becomes an important part of this healing process” (Comack 2012, 232). As I will discuss in the examples that follow, a wealth of anti-violence measures are already unfolding within diverse Indigenous legal orders in BC, both in partnership with, and apart from, representatives of Canadian law.
First, however, I discuss the fundamental principle of reciprocal responsibility which differentiates Indigenous systems of law from those of western law.

6.2 Reciprocal responsibility

Balance comes through the Law of Relationship – a relationship with all that is around us. Any relationship demands the witnessing of another – that other being another way of seeing the world. (Black 2011, 185)

In *The Land is the Source of the Law*, CF Black compares Indigenous legal regimes in New Zealand, the USA and Australia, suggesting that in these systems, individuals are characterized by their rights and responsibilities to the land. Through legal texts and stories, Black re-defines an Indigenous jurisprudence which is circular and concentric. Individuals are placed inside a series of circular relationships which bring individuals back into reciprocal relations with the land. While Black focuses on the potential for these renewed relationships to restore global health in the wake of climate change, a similar lens could be used to rethink our obligations to one another within this relational legal framework. “The knowledge and outcome of this jurisprudence, and these journeys, was the realization that the Land is the Law and that Law is sacred in its content, healing in its application and, most importantly, leads the individual into lawful behaviour, in which they carry out their responsibilities and in turn gain natural rights” (Black 2011, 167). For example, the Law of Relationship, which Black suggests might bring humans into constructive management of land, could be used in rethinking justice in our communities. Whereas Western legal systems are imposed on all citizens within its jurisdictional boundaries regardless of their investment or agreement with its rules or its character, Indigenous socio-legal relations are imbued with qualities of reciprocity and responsibility. These networks operate at more intimate scales than those of Canadian law, entailing the creation of responsibilities that are given meaning at interpersonal, family or community levels. Aboriginal justice “embraces a knowledge of who I am, an understanding of my responsibilities which are both individual and collective, and only then a sense of what is fitting, right or fair” (Monture-Angus 1995, 258).
The nature of indigenous law, then, sits in stark contrast to the criminal justice system which was discussed previously as central to the maintenance of colonial power relations sustained by the violence of law. As Cover (1986) illustrated, Western legal interpretation (which is textual) relies on the social practice of violence by legal actors who carry out textual judgments. The myth about law as the antithesis to violence is thus maintained by keeping the legal interpretation of judges “distinct from the violent acts they occasion” (1613). Cover reminds us that law’s violence is not merely textual but physical, a matter of life and death. Within the expressions of Indigenous law being theorized here, the individuals creating new socio-legal norms are also implementing those norms. Rather than decisions being made by a powerful authority figure and then carried out by someone else, both of whom are at a distance from the people being impacted by their decisions and actions, Indigenous law operates within intimate networks. Given the mutuality of violence, law and power in Western society, Sarat and Kearns (1992) argue that we must acknowledge the limits that law’s violence imposes on its possibilities. And if we take seriously the mutual imbrication of law, space and society, we must also examine how law’s violence shapes the broader possibilities of creating a more just society. I suggest here that the qualities of reciprocal responsibility within the intimate network of an Indigenous legal order demonstrate that violence is not always inherent to law, but is culturally specific to Western legal orders. As we will see in this discussion of Indigenous law, legal pluralism provides possibilities for addressing violence in ways that do not themselves entail violence, but instead involve healing, respect and individual agency.

This quality of reciprocal responsibility operating within an intimate network of relations was common across numerous examples of anti-violence strategies shared within the interviews. Unfolding within a set of intimate relationships, every person in the network uses their agency to create and enforce rules or laws, not just those in positions of power. Rather than relying on force or threat of violence to ensure people adhere to socio-legal norms, individuals are part of creating the norms themselves and are therefore invested in upholding and abiding by them. A reorientation toward these legal principles follows the work of Henderson (2002) who states that “to move forward, the legal system must establish new ways of learning to think, converge, and act together without reliance on force to create justice” (51). Indigenous law is certainly not beyond
critique, and each Indigenous legal system has its own culturally-specific principles and mechanisms for justice, but it is heartening to witness the potential of these qualities as they have been experienced by the research participants.

This reliance on a network of individuals within an Indigenous community have similarities to what Indigenous legal scholars describe as customary law. As Val Napoleon (2010) describes in the Gitksan adaawk, Gitxsan legal reasoning is a public process, and “it is the shared common knowledge and practice that is the essence of legal reasoning” (62). The lack of anonymity between parties makes unethical behavior unlikely, as do their longstanding family and community relationships. Napoleon writes, “Gitksan customary law does not derive from a centralized authority but rather is generated by interactions and experiences over time – and embedded both explicitly and implicitly in Gitksan cosmology and ontology” (60). Connecting local Indigenous ontologies and cultural practices together with contemporary social issues, the anti-violence measures described below might be understood as new expressions of customary law.

In her LLM research, Friedland (2009) examined the potential for Cree, Anishinabek and Salteaux Windigo and Wetiko stories to provide legal solutions for child abuse and violence in Indigenous communities. She writes “The actions of people in the wetiko stories show how people work together in a principled, effective way to face violence and danger created by community members. I believe these principled ways of responding to terrible harm can be seen as part of Cree, Anishinabek and Salteau law” (15). The meaning of these stories emerge within a network of people “close to us” (17) and therefore offer tools for thinking about how to address violence perpetrated by individuals within this intimate network. Friedland uses the wetiko stories to outline a series of legal processes, responses, obligations, rights and principles, demonstrating their legal qualities. The principle of reciprocity or ‘helping the helpers,’ is told through stories in which the animals, spirits, and other figures are given gifts or appreciation for their efforts to kill or otherwise deal with a wetiko. While my research did not explicitly look at culturally-specific stories for dealing with violent people or people who do not follow local laws, elements of cultural knowledge were central to developing a shared meaning and sense of responsibility within local legal networks.
This reciprocal responsibility can be seen at work within the networks of people involved in both Indigenous anti-violence initiatives as well as within pluralistic legal practices which draw on both Canadian and Indigenous law. Hurlbert and McKenzie (2011) argue that previous changes in the Canadian criminal justice system have oriented the system increasingly toward restorative, rather than punitive measures, making space for the recognition of Aboriginal culture in the process. However, they argue that the underlying values of Canadian law are in conflict with those of Indigenous laws, and as these underlying values remain in place, alternative justice models end up being more of an appendage than a true reorientation toward Indigenous law. They emphasize the potential for community processes which allow Indigenous people to reproduce themselves as a community of friends and relatives rather than communities of strangers (158-9), but say that current efforts that work within the criminal justice model have thus far only “preserved the fundamental features of the Canadian criminal justice system” (159). As I discuss next, networks of reciprocal responsibility have the potential to give rise to new categories of violence within a reorientation toward local systems of meaning that are co-created among its technicians. Importantly, these new categorizations of violence are not mere possibilities, but are being enacted in Indigenous communities today yet remain unseen within portrayals of the colonialscape in which only Indigenous peoples’ victimization can be seen.

6.3 New categories made visible at a local level

I’ll talk with young people and they’ll know who the rapists in the communities are. They’ll know who’s really, really violent and who to watch out for at parties, you know, and stuff like that. They’ll know this information and it’ll just be like this common knowledge. But no one has faith that if they called the police or tried to press charges that something would happen. (Helen)

New meanings around violence are emerging in places where residents are able to have culturally meaningful conversations with one another – not only about violence itself but more broadly about what it means to live well together. Through developing shared language around their identity, the nature of their relationships, and the role of violence in those relationships, definitions of ‘violence’ emerge at a local scale. These
new definitions also come to redefine what ‘law’ means, as local level responsibilities come to form a system of law that is enacted in relation to or in tension with systems of Canadian law. As categorizations of violence shift, so too do categorizations of law. Indeed, part of this recategorization unfolds because of conversations about historical and colonial violence in which Canadian law and legal actors have played a central role. This naming or truth-telling includes sharing knowledge about the role of police in ignoring reports of violence, blaming victims of violence for their own abuse, or otherwise acting violently themselves. Other examples include being honest about the process of going through the court system as a victim of violence, where the court process might entail further trauma. Conversations about interpersonal and legal violence are intertwined, and, as such, these conversations at a local level result in redefinition of both violence and law.

In an interesting example, Lisa described how the police’s lack of familiarity with the local violence terminology is an integral part of their inability to address violence in Indigenous communities. She said that the word “bother” is used to talk about rape or sexual abuse in particular isolated Indigenous communities, but because police are not knowledgeable about this term (they are situated outside the network of reciprocal relationships in which this term is given meaning), the sexual abuse remains invisible to them. The inability of police to translate across the cultural gaps of Indigenous and Canadian socio-legal relations, then, are integral to the violence of neglect they enact.

Importantly, the local scale at which the symbols around violence prevention and responsibility become performative are also where their power lies. It is much easier to shift and adapt the meaning and nature of visibility and recognition at these relational scales because their meaning relies on the mobility of Indigenous knowledge and its adaptation to changing socio-legal conditions and power relations. Although a swatch of moose hide may not mean anything to the average Canadian, for those within the Moosehide Campaign networks, they have a particular sense of respect, ability to call one another on acting violent, and a connection to the broader cultural meanings of the hide. Use of these symbols does not rely on the approval of the federal government or any outside authority, nor does it depend on external funding. Violence can be made visible and can be redefined through strengthening the quality and meaning of
relationships within a single family, a relationship between two people, a group of peers or an entire community.

Not all categories of meaning emerge intentionally or within an established framework, but some instead emerge naturally at a family or interpersonal scale. Again, this is where their power lies. Working with their own families and other families, a number of Indigenous legal technicians shared stories of shifting norms around the expectation of violence through conversations over many years. Within families where intergenerational abuse has occurred, violence may be normalized while going unnamed. As Natalie said “everyone knows, and no one knows”. In this way, all family members may have experienced violence or abuse but because everyone is implicated, no one is able to talk about it without risking the entirety of their family relationships. By talking about personal experiences of violence, many of the interview participants have themselves begun to change the norms within their families by becoming known as someone who is taking a stand, giving a name to acts of violence, and saying “no more”.

Efforts to create culturally relevant categories of violence in local Indigenous communities also entails shifting away from western anti-violence strategies which categorize men as offenders and women as victims. Rather, as will be discussed in these next two chapters, people of all genders are positioned as part of the same community, both through their shared orientation toward local legal systems and roles, as well as shared histories of colonialism and experiences of legal violence. Through this orientation toward local systems of meaning and local histories, naming the violence of Canadian law itself comes to define Indigenous people’s legal consciousness and subjectivity at the local scale. This meaning emerges not only from the networks of reciprocal responsibility described above, but also the naming of historical and ongoing colonial violence within material realities of colonialism. I would suggest this constitutes an ontological shift in socio-legal categories and subjectivities, such that the naming of colonial violence comes to be part of shared understandings of what defines the network of reciprocal relations itself, as well as the meanings that emerge within the scale of that network.

In addition to fostering local level understandings of violence, communities are undertaking initiatives to develop shared understandings of health, vitality and
responsibility in order to be proactive about lessening violence. Shelley talked about a school which has integrated Anishinabek seven grandfather teachings into their school structure, giving each class one teaching to explore throughout the year. In this model, the students themselves come to understand and represent the teaching in artwork and in conversation with other students. They bring these teachings home and pass them on to their family members. Shelley says the power lies in making space for these teachings to be discussed, made more visible, and given meaning at a local level by community members themselves. She reports that this program has brought a level of responsibility to community members that has had amazing results.

6.3.1 Holistic models in urban environments

Within urban environments, we have seen in the previous chapters that Indigenous people are frequently marked as ‘out of place’ by being criminalized and targeted for violence. These rationales emerge from, and sustain, the colonialscape representation of Indigenous people as naturalized within the space of Indian reserves. Canadian justice measures to address violence separates out offenders and victims while failing to address the larger social contexts in which this violence occurs. Yet within urban centers, some Indigenous people and organizations are creating programs which use a more holistic approach, allowing for relationships of reciprocity to develop among urban Indigenous people.

Barb has worked at the Prince George Native Friendship Center for over 20 years, and is now its director, overseeing all of the center’s programs. When I asked Barb what programs they offered to address violence, she said that although they offer Victim Services, women’s transitional housing, a group home for Aboriginal youth, a men’s housing facility and other programs specific to addressing violence, violence is addressed within every program they offer. Thus, violence is not separated out as a specific issue but is instead integrated throughout their programs. This integration arose because the individuals accessing their services – whether literacy, the food bank, employment, or counselling – are most certainly impacted by violence and will often seek support from those with whom they develop relationships in various programs. “As part of the relationship building and building trust and building a place that is safe for individuals, often times those pieces of their life come in to the programs they’re
accessing.” (Barb) The PGNFC staff aim to build trust and a sense of safety within long-standing relationships with clients, making it more likely for them to speak about violence directly.

### 6.3.2 Moosehide Campaign

The Moosehide Campaign, started by Paul Lacerte, operates within a framework of responsibility in which ‘violence’ comes to be defined within an intimate community network. In this approach, men and boys wear a square of moose hide after making a pledge within a group of other Indigenous men not to be violent toward girls and women. They also pledge to call one another out if they are not living up to this promise. Although the campaign is operating within diverse community contexts across BC and beyond, the method and system of meaning through which the campaign takes shape differs from one community to the next. This allows the symbol of the moose hide to be given culturally specific meaning in relation to broader Indigenous cultural practices, gender relations and definitions of violence. For example, in Prince George, Barb described how the campaign took shape within this urban setting. A group of PGNFC staff and male clients decided they wanted to have a moose hunt, tan the hide and use the meat in order to bring cultural meaning to the promise they were taking on by wearing the hide. Within an urban setting, most male clients do not have many opportunities for hunting, so this component was an important part of developing a culturally-rooted meaning. The ceremonial aspect of distributing the hide and making a shared promise also took shape within the particularities of this cross-Indigenous urban network. At the Friendship Centre, the men formed a circle in the middle of the room while girls and women formed an outer circle to support the men in their endeavors to not inflict violence. This whole community approach created a common understanding of the symbol of the moose hide and also created a common understanding of violence and anti-violence strategies at interpersonal levels.

One of the people that’s a part of the group of men is our spiritual advisor who does ceremony for us, so he does sweatlodges and pipe ceremonies and all that kind of stuff. So one of the things that he talked about when we launched the Moosehide Campaign was that we’re making a commitment to each other – male to male – making a commitment to each other when you accept this piece of moose hide, right? And that becomes like a law, I guess, in itself, when you’re
making a commitment and you’re placing it over your heart and all those pieces that are really a cultural way of looking at things. (Barb)

More broadly, education about violence, colonialism and healing that unfold within Indigenous communities are an important part of forming networks of people with a shared knowledge of these issues. Shelley said that after many years of supporting Indigenous communities to raise their understanding of historical and current dynamics of violence, changes are beginning to be seen, primarily in the ability to name and identify violence. Systems of mentorship have been integrated into this approach to education, as peers can take responsibility for sharing knowledge with one another and with others in their networks. Although Shelley said that incidents of violence are not necessarily decreasing, adults and youth within Indigenous communities are now able to have conversations about violence because they share a common language and framework for doing so.

Operating at the scale of Indigenous communities or families, reciprocal responsibility relies on sharing a common understanding of how to live with one another in a respectful, sustainable and culturally grounded way. In the context of Dene traditions, the process of tanning moosehide has been described as being “about collective co-operation, responsibility, tenacity, self-reliance, commitment, and accomplishment requiring multiple and specifically Dene knowledges. In many respects, it is about configuring personal strength and individual initiative to the benefit of the collective” (Irlbacher-Fox 2009, 38). Within these collective cultural frameworks, definitions of violence emerge within broader systems of knowledge and ways of relating to one another and to the land. As the Moosehide Campaign exemplifies, the meaning of the pledge to be free of violence is derived from the men’s’ efforts to kill a moose and prepare its hide in a respectful way. While showing respect for the violence they inflict on the moose in taking its life, the men also enact hunting traditions in which hunting and eating moose has a culturally specific meaning. Thus, interpersonal violence is situated within broader culturally specific socio-legal identities.

As discussed in Finding Dahshaa (2009), moosehide tanning practices embody principles of self-determination, providing an “understanding of Dene culture and values, allowing for an appreciation of the nature of the difference between Dene and non-Dene
worldviews generally and with respect to self-government” (36). Emerging from culturally-specific values and embodied identities, the Moosehide Campaign makes visible a different subject in relation to violence. Rather than girls and women being marked by the expected violence against them, this campaign marks men and boys with the expected stance they are going to take against violence.

Indigenous legal scholars such as Val Napoleon also provide resources for how networks of reciprocal responsibility were historically used in specific Indigenous communities’ to solve disputes. In Living Together: Gitksan legal reasoning as a foundation for consent, Val Napoleon (2010) outlines a dispute resolution process over a totem pole in Gitsegukla in 1945. Napoleon’s work demonstrates not only the already existing presence of Indigenous law, but also its ability to settle disputes for which Canadian law cannot account. Comparing the history and reasoning of early English common law with Gitksan legal reasoning, Napoleon traces how ‘consent’ is enacted in a horizontal, rather than vertical, system of Gitksan governance. Using ethnographic texts and the oral histories of anthropologists, Napoleon reveals that the archive does contain knowledge which upholds Indigenous legal principles and allows for Gitksan jurisdiction to be exercised through the feast system. However, as Napoleon (2010) argues, “Serious questions arise as to whether codification would undermine the flexibility of customary law and its applicability, and whether it would actually remove customary law from the people by placing it in the hands of legal experts” (67). Thus, many questions remain in the revitalization of these traditions within a contemporary context. Smith (1999) writes, “democratizing in indigenous terms is a process of extending participation outwards through reinstating indigenous principles of collectivity and public debate” (156). Rather than drawing conclusions about a specific role for Indigenous law in relation to Canadian law, scholars such as Napoleon open up new possibilities which are to be explored through a participatory process rather than being determined by one or two ‘experts’.

As the interview participants discussed, we need to look to our own cultural practices for processes that can be adapted to today’s realities, because, as Monture-Angus (1995) reminds us, it is unlikely we will find mechanisms for dealing with contemporary realities of violence in traditional law because they were not needed. Rather, Monture-Angus (1995) advocates recovering Indigenous law which “has at its
center the family and our kinship relations” (258). As discussed, the interview participants also spoke of approaches which extend beyond the family to broader networks of individuals with a shared understanding of law, including spaces in which this shared understanding can emerge in girls groups or youth groups and among networks of Indigenous women. “Law is about retaining, teaching and maintaining good relationships” (Monture-Angus 1995, 258). We are thus looking for ways to resolve conflict or address serious rifts in the community by adapting existing processes or principles such as ‘horizontal consent’, for talking about difficult things, restoring our relationships with one another, and righting wrongs. We do not need to wait for violence to happen to engage in these solutions, as the networks that support these practices are engaged in many activities to build a shared cultural understanding of our responsibilities to one another.

6.3.3 Girls groups: a space to walk beside violence

Girls groups are one model that has been developed to create an intentional space in which a shared understanding of violence can be developed, and in which violence can be made visible in order to bear witness to it. Natalie sees the most need for girls groups in small or isolated communities in which violence is kept silenced and where there are few spaces in which to talk openly or seek support for experiences of violence. Girls groups are simply spaces where girls and women come together to create a shared dialogue and creative exchange across the generations, within a common framework of respect. “The groups provide the girls with the opportunity to explore their experiences of abuse, sexual exploitation, body image and violence, as well as their strengths and daily lived realities in a safe and non-threatening environment” (Bell-Gadsby, Clark and Hunt 2006, 4). In this model, the groups foster a sense of healthy self-expression, decision-making and life skills, utilizing a relational/cultural model that can be applied across diverse community contexts. Girls themselves come to define the terms or guidelines of the group, developing a sense of reciprocal responsibility to one another over time, as well as a shared language in which to talk about issues of their choosing. Likening girls groups to ceremonial models of supporting girls through adolescents into adulthood, Natalie said “If the circle is that
piece of ceremony we can reclaim until the other ways of witnessing violence are returned or remembered or rehonored then that’s maybe why in itself it’s been of value.”

Natalie was first inspired to develop a girls group while working as a counsellor in the greater Vancouver area, primarily with Indigenous and racialized girls who were often not showing up for counselling appointments. She describes the girls as being impacted by multiple systems, including being in foster care, involvement with the justice system, and mental health systems. For girls who had experienced trauma, the girls group allowed them to gather together in a space that was their own to define, as the youth center where Natalie worked was largely overrun with boys. At the time, girls group models were generally being written about in counselling literature as “that sort of white approach to self esteem in a feel good kind of way” (Natalie), so Natalie wanted to start something that was different in that it explicitly provided a space to address the difficulties the girls were facing in their daily lives. Natalie saw this need for marginalized girls to have a space in which to address past experiences of violence, which differed from the more privileged girls who were her clients:

The kids that did well were believed, supported, you know, privileged in so many ways so that they could come for 8 or 10 counselling appointments and ‘heal’, or move on, or deal with it. Justice was still not enacted through the criminal justice system generally, but there was more justice. What I saw with these young women was there was more injustice upon injustice, you know, and then the system added to that. (Natalie)

For many girls, the group was the only space where they could be heard and believed when they talked about the violence they experienced, as often their attempts to speak out were not acted upon in their own homes. Natalie told a story about a girl who had disclosed violence by a relative within her own family, but nothing had been done by her parents or other family members to stop the abuse. As Natalie described “You tell. You are asked if you want a lock on the door. Nothing happens.” This young woman then came to girls group one day and announced that she wanted to tell the group she was being abused by her relative, and wanted it to stop. Within the group itself, she found a place among her peers and with trusted older women in which to take a stand to stop the violence she was experiencing. She knew that this was a safe place to do so, because of the conversations they had had as a group about violence, and the
level of choice and respect she was given as an active member of forming the group. Rather than telling just an adult who is in a position of power with a duty to report (such as a teacher), she chose to disclose within this group setting where girls and older women were witnesses within a network of reciprocity.

Natalie and the other adult facilitator worked with the girl to decide what action to take next, including moving into foster care after reporting the abuse to the Ministry of Children and Family Development and the police. However, as discussed in the previous chapter, through further acts of systemic neglect and violence, no report was taken from her by police until weeks later. Importantly, the girls group gave her a space with a shared understanding of violence because of the education and dialogue they had shared, which was lacking in her own family. As Natalie described her own role, she supported the girl by being honest about the court process, as well as what might happen when she was moved in to the care of MCFD. She also called the police repeatedly, asking them to take a report. She described the response of police as similar to that of the girls’ family: “It’s like you tell. You are asked if you want a lock on your door. Nothing happens.” The normalization or expectation of violence within a family in which abuse is prevalent mirrors that of the systemic response: even after abuse or violence is disclosed, nothing changes. Thus, even when violence is named by people who have experienced it, if there is no place in which to have that violence seen as problematic and worthy of an adequate response, it will have no impact. However, within the girls group where a common language of violence already existed, she found support, understanding and a witness to her experiences.

6.3.4 Community marches in Nuu-Chah-Nulth territories

At another scale, violence can be made visible within whole communities by drawing on existing traditions to denormalize violence in a way that is culturally and historically meaningful. Chaw-win-is was involved in initiating a series of marches to honor girls within Nuu-Chah-Nulth communities along the coast of what is now called Vancouver Island. As she shared, “It just really hit me that not one of us hadn’t been affected by or witnessed violence. Not one woman and plenty of men. And some of my uncles totally distanced themselves from my community because they were so angry, they felt if that was part of being native, they didn’t want any part of it.” However,
although violence against women is prevalent, everyone in the community has a role in her approach to addressing violence. Again, a network of reciprocal responsibility is central to addressing violence in this Nuu-Chah-Nulth approach.

Chaw-win-is was involved in more visible political actions to protect and advance Indigenous self-determination, such as in the West Coast Warrior Society. However, after a girl in her community was assaulted, Chaw-win-felt compelled to focus her energy in a different way, organizing a series of marches to honor young women in coming of age ceremonies, as a way to revive respect for young women. Her ability to do this rested on her intimate cultural knowledge, her role as a leader and warrior in the community, as well as her movement outside of the community. It is common that in small communities those who publicly take a stand against violence often face backlash, which is the level at which the marches were intended to create change by revitalizing local cultural practices. The events were not in the media and did not rely on government funding, but were supported by local communities and families themselves. The marches provided a way for girls and women to hold one another up, and to let girls know someone believes in them. The responsibility of men, on the other hand, is to take the pain of the women in their community and move forward with it. Rather than focusing just on colonialism or what needs to be healed, the focus of the marches is on building strength within. “It changed my life. It was only a ten-day march and I realized how important it was. It wasn’t very popular, it wasn’t in the media, there wasn’t a premade blockade, there wasn’t any tires burning, no nothing.” Chaw-win-is said that Nuu-Chah-Nulth teachings tell Nuu-Chah-Nulth people that violence is not okay, and this must be the foundation for anti-violence strategies within the community, along with naming the violence of the Canadian legal processes and historical displacement.

The girl’s coming of age ceremony was just one measure Chaw-win-is was involved in to de-link Indigenous women and violence, by invigorating the roles of Nuu-Chah-Nulth women within their cultural framework and system of meaning. She has also been involved in efforts to bring coastal women together to talk about to strengthening their support for one another. The roles of coastal women and men are specific to Nuu-Chah-Nulth socio-legal systems of gender. For example, Chaw-win-is described women as being concerned with root problems, being oriented toward local realities within families and communities. Whereas men may go off to fish or hunt or work outside the
community, women are responsible for getting organized locally. Chaw-win-is sees this internal strengthening as an important way of disrupting the power of the state, with their ‘small beans’ contributions to Indigenous nations: “We have to get our houses in order so we can fight larger battles”. However, Chaw-win-is herself also stands with the men, moving between her role in the local community and working outwardly within broader society.

6.3.5 Blended model: community court

The community court being set up in Kamloops seems to be one pluralistic initiative with the potential to reorient Indigenous people within a close network of relations to which they are responsible. Linda described the different sense of accountability the offender has within a system they choose to participate in versus the Canadian system that they are moved through without their consent. The court process is open to all community members, asking participants to be actively involved in each case by witnessing, talking about how the crime impacted them and their families, and helping to decide and enforce a sentence for the offender. Although the sentencing of the court is ultimately approved by a provincial court judge, the sense of responsibility among all participants, including the offender and other members of their community, operates within the network of family relations which extend throughout the area. Accountability is already strong within the existing networks of Indigenous people – or legal technicians – who are involved in the justice process and the solutions are more likely to be effective because they are embedded in strengthening, rather than severing, the sense of accountability all parties have to one another. The community court will be further discussed in the following chapter.

6.4 Caution against reproducing colonial categories

Although these measures are creating significant possibilities for change in Indigenous peoples’ lives, several technicians cautioned that Indigenous legal processes based in reciprocal responsibility can serve to replicate colonial power relations when used in combination with Western legal processes or discourse. For example, Natalie
described shunning being used to banish people from Indigenous communities in ways that reproduced western labels of ‘good’ and ‘bad’, consistent with dominant criminalizing and pathologizing discourses. In her example, young people who were deemed to be repeat offenders or troublemakers were banished from the community rather than being rehabilitated or supported through counselling or other measures to address the root causes of their troubles. As an Indigenous counsellor, Natalie sees that the coping mechanisms young people have developed to deal with the violence of colonialism, and their individual experiences of trauma, have been labeled under mental health or criminalized categories. Thus, rather than being a young person coping with ongoing violence, systemic neglect and disconnection from family, for example, a youth will be labeled an ‘at risk troublemaker’ who is ‘acting out’ and displaying symptoms of ‘borderline personality disorder’ or ‘PTSD’. This categorization under western discourses of mental health and justice, rather than within an Indigenous decolonial framework, inevitably brings attention away from the systemic violence in their lives, instead labeling the individuals as ‘the problem’. This is one example in which Indigenous ways of dealing with violent offenders can reproduce western distinctions between interpersonal and systemic violence, rendering the violence shaping the lives of the offenders further invisible.

Helen also talked about shunning in her own community, saying that it took many years before repeat offenders were shunned, resulting in them abusing many people over many years before they were banned. Shunning or banning someone from a community generally relies on a court order to make it enforceable, bringing this traditional practice together with the authority of Canadian law. Additionally, the order is enforceable within a territorial space recognized by the state – that is, federally delineated Indian reserves. Although this approach was seen as positive by Helen, because shunning has the potential to enforce a zero tolerance stance on sexual violence, it will only be effective if it operates within a network of reciprocal responsibility. This could mean that all community members agree to a zero tolerance approach to sexual violence or child sexual abuse, requiring that residents first educate one another on what these forms of violence mean. Other measures may need to be put in place first to make the approach enforceable and meaningful within the cultural practices of the community, before it becomes a truly effective way to deal with violence prevention.
6.5 Conclusion

As the examples in this section illustrate, Indigenous people in urban and rural areas are taking measures to strengthen their relationships and create new understandings of law and violence within local networks. While some of these measures operate in tandem with technicians of Canadian law, others are upheld only by those same people who created them. Often these groups are small, comprised only of a handful of people with a shared interest in shifting norms around violence. Yet, whereas we have seen that Canadian legal measures often serve to reproduce realities of violence in the lives of Indigenous people, the efforts described here not only serve to redefine and problematize interpersonal violence, but also aid in avoiding a deeper engagement with the violence of Canadian law.

In the next chapter, I will discuss the qualities being enacted by Indigenous legal technicians as they reorient themselves toward the intimate fires of law in their communities. Rather than appealing to the power of Canadian legal officials, such as police, lawyers and social workers, these powerful stories speak to the potential to engage the jurisdictions of Indigenous legal regimes which are alive within the land and the bodies of Indigenous people. Through representing themselves as subjects of Indigenous, not just Canadian, law, Indigenous people are engaging in technologies of spatial intimacy rather than the spatial distancing of the criminal justice system. These efforts have the power to rupture the neutral appearance of the colonialscape, repositioning Indigenous people as members of community relations based in reciprocity rather than those based in colonial power.
The stronger culture is in community, the less violence there is in community. It’s a known. What we know is that the stronger we are in who we are as cultural people, the greater our levels of responsibility and accountability and ownership and awareness. Those things grow so much more cohesively and without an acceptance of violence. (Shelley)

Turning away from the violence of Canadian law, we have begun to see that Indigenous people are undertaking measures to address violence on their own terms. Violence is being redefined at a local level, as Indigenous people enact socio-legal relations rooted in Indigenous territorialities rather than those of the colonialscape. Having presented several initiatives which are being used in Indigenous communities to create new norms around violence, which I suggest are expressions of Indigenous law, I will now explore more fully the nature of these efforts. As I have discussed, Indigenous systems of law unfold within networks of people who utilize their own power and agency to uphold the quality of their relationships with one another, the land, animals and their ancestry. In this section, I will further explain the nature of visibility within Indigenous law and within dynamics of legal pluralism using the observations and examples shared by the Indigenous legal technicians I interviewed. Here, I am interested in asking what qualities and mechanisms of diverse Indigenous legal traditions are put to work in creating the networks of responsibility within which the previously described initiatives arose. What qualitative shifts can individual Indigenous people undertake in their lives and actions in order to reconfigure the spatial relations in which our communities are formed? Thus, my analysis is rooted in the lived, ongoing, active nature of Indigenous legal interventions in diverse community contexts across BC and in Indigenous legal scholarship. Through specific stories and examples, I suggest that Indigenous law itself
occurs within a scale of intimacy that is lacking in colonial law. This reorientation toward the power of enacting networks of responsibility, and the roles of individuals within those networks, is also part of taking responsibility for the limitations and possibilities of my own work in this field over the years in relation to this larger network of technicians.

7.1 Personal meaning

In order to conduct work on violence, Indigenous legal technicians must develop their own personal understanding of violence and law. When asked about their own definitions of violence, participants described the processes by which they came to name various forms of violence, including interpersonal violence and the violence of law, in their own lives. This personal process of denormalizing violence was pivotal to their role as Indigenous legal technicians who are witnesses to violence. Many of these stories involved identifying personal experiences of domestic abuse, sexual abuse, witnessing abuse, their apprehension by the government as children, being arrested and racially profiled, or having family members arrested and racially profiled.

Surprisingly to me, a number of women who have been working for many years on issues of violence shared that their ability to name the violence against them and to see themselves as survivors of violence or abuse, has been relatively recent. Their stories illustrated a multilayered process of recognizing, naming and identifying with various forms of violence throughout their lifetime and across various places of work, their homes and families. A number of people spoke of their recognition of violence beginning away from their own families, such as while taking part in training associated with their field of work, or within their workplace.

Freda shared her process of coming to name the violence she had grown up with when she began a counselling program: “For me, it was kind of an eye opener, being a student in family violence and community counselling. Because when they put up the continuum of family violence on the wall, I remember looking at it and thinking ‘wow, that’s violence’. Because when you grow up with it, it’s so normal, you don’t think of it as anything like that, right? And so it was a real eye opener for me” (Freda).
As Barb shared, although she has been working with families and communities in Prince George to address violence amongst other issues for many years, it was only recently that she began to identify as a survivor of domestic abuse. Although she had an inner knowledge of the abuse she suffered in her first marriage, it was only in the last year that she began to publicly name this history as she saw the importance of showing community members that anyone can be a victim of violence. Part of the reason why it may have been important to first begin identifying violence within a professional context before being able to name it in their own lives was, Barb expressed, due to the shame associated with being a victim.

I’m a survivor of domestic violence and it’s been an intergenerational process, right? When you have that family breakdown, it impacts not only the individual that’s experiencing that, but my children and my grandchildren have been impacted as well. In fact, I’m a grandmother raising five grandchildren who have been removed from their parents as a result of the impacts of domestic violence. And, you know, my son has himself been violent towards his partner and the drugs and alcohol and all those things that are part of that process, right? And they’ve had their children removed – my daughter as well. So, you know, we’ve been raising our grandchildren for 9 years now. I think back to the time when I was a victim of domestic violence, where things have changed. I think that it’s still something that’s very silent, you know, because there’s all kinds of things that are attached to that – shame and humiliation and embarrassment and guilt and all those kinds of things. (Barb)

Barb and many others expressed that their identification of interpersonal violence developed alongside the identification of racial profiling by police officers, or other harms of Canadian law itself. For some, however, their identification of violence began with the violence of law or the state: “Looking at the larger system has been a part of understanding me and my response to the world.” (Chaw-win-is). Definitions of violence, then, included not only violence on an interpersonal scale, but also the violences of law, historical violence of colonialism and the co-implications of legal and interpersonal violence in one another.

Overall, the process of naming and identifying with various forms of violence within and across diverse networks of meaning, were central to Indigenous legal technicians’ ability to change norms around violence. While these processes took different forms, at different times, and across diverse sites of learning and personal
change, there was an intimate identification and personal connection to violence. None of the participants talked about violence as being ‘out there’ or as purely a ‘legal issue’, but rather as a very personal issue connected to themselves and their loved ones. Indeed, this personal relationship to violence was a strength in this work. For some, their personal knowledge allowed them to gain the trust of their clients more quickly due to this shared history and experience. For others, their familiarity with violence spurred their own anti-violence initiatives and their convictions to speak out and name violence in their community. As Claire said “this work chose me”, and many of the technicians expressed a similar sentiment of feeling personally compelled to focus on issues of violence due to their experiences. As I explored in chapter two, I see this as a sign of Indigenous legal technicians carrying our their responsibilities as witnesses. Indeed, my own work on issues of violence emerged because of witnessing the impacts of violence and abuse in my family and in the communities in which I have lived.

7.2 Role of technicians themselves

Acting in orientation to diverse systems of Indigenous law, and within both networks of reciprocal responsibility and as professionals within Canadian society, the legal technicians discussed how they perceive their roles in relation to law and violence. Their legal consciousness, then, was formed in relation to Indigenous worldviews and Canadian law, including law’s violence. For the most part, the Indigenous legal technicians worked in relation to Canadian law but did not hold much hope for their ability to make changes at this level. In fact, as one person expressed, “I see no point in what I do” in relation to changing Canadian law, policy or systems.

Yet, in addressing violence at personal, interpersonal, family and community levels, the Indigenous legal technicians saw their roles quite differently. Participants saw themselves as translators, tour guides, witnesses and truthtellers. Akin to my own understanding of my responsibilities as witness within a Kwagiulth legal context, a central part of this truth-telling was being willing to name the violence in their own lives, as well-known, visible leaders within their own communities.
I think to myself, you know, I’m a professional person, I’ve been away from my relationship, I was finally able to flee after 20 years in 1989, so that’s a long time ago. And I only ‘came out’, if you will, about six months ago, you know? So it took that length of time because it damages you as a person, your mind, body and spirit. So if it’s taken me a whole generation to come about, I think that’s also what’s happened in terms of that awareness. (Barb)

Thus, Barb likened her own ability to come to terms with the violence she faced with the ability of whole communities and broader society to come to terms with violence facing Indigenous people. Truth-telling, then, is part of a process of healing from colonialism and facing realities of violence that have been normalized for far too long.

Truth-telling was also described as the ability to name violence in order to tell the truth about the violence of law and its relationship to other forms of violence. As Natalie shared, she always tells the truth about the justice system to young women who are disclosing abuse, so that they can make an informed choice about whether or not to go through official channels. She tells them about the reporting process, the often lengthy court process, the options for testifying in court, and all of the other potential results of engaging with formal legal processes. This ‘truth-telling’ about the violences of law are as important as ‘truth-telling’ about physical experiences of violence.

As translators and tour guides, a number of people described their role as negotiating between the cultural and social meaning within Canadian law and Indigenous law as well as navigating various legal norms as they moved between diverse socio-political spaces. Linda talked about providing a kind of “Lonely Planet Guide to Reserves” in her work with representatives of Canadian law and government, as many of the people who have an official legal role on reserve, such as police and social workers, have no understanding of what life on reserve is actually like.

The ability of the technicians to act effectively in their roles was reliant on their long-term relationships within and across communities. Where police may go through training to become a police officer and then live in a particular community for a couple of training years before being moved on, these legal technicians had long-standing relationships that extended beyond any formal role they currently hold. Their knowledge, networks of relationships and ability to act as witnesses to violence required a commitment to be not only present, but active, over the long term. Additionally, the
majority of technicians had family or other personal relationships in some of the communities in which they lived and worked. Even Shelley, whose work is now in communities across Canada, continues to go back to the same communities over the years, and maintains relationships with them even over long distances. Her ability to impact change in these communities hinges on her long-standing relationships.

On the other hand, a number of people said that one of the reasons police and others have an antagonistic relationship with residents of small communities is because of their short time frame working with them, and the distance they maintain between themselves and the communities. In order for police to support the work of Indigenous law, then, they would need to become familiar with the longstanding networks of relations in which Indigenous law unfolds. Further, following Comack (2012), police and other Canadian legal technicians (such as social workers, crown counsel and judges) have opportunities to support decolonization or community development by being integrated into the communities they are mandated to serve, shifting their focus toward supporting community mobilization. This requires a fundamental shift away from the current punitive system of justice in which the police have a ‘crime-fighting’ role. A long-term commitment to developing relationships within a specific community is thus integral to the ability to form intimate networks within pluralistic systems of Indigenous law.

Meaningful relationships are also integral to the role of legal technicians as witnesses. Natalie shared a story of one girl she worked with over many years who described having a longstanding connection between herself and Natalie. “She said ‘it’s like there’s a fishing line between you and me that can bring me back to this place’”. In this way, having a witness in a specific time and place can be recalled into the present moment, as that connection remains ongoing over time. Traveling along the fishing line, a victim of violence can be brought to a time and place where there was a witness to the violence they faced and where their truth can be named and acknowledged by another.

Chaw-win-is described her identity and her role as rooted in Nuu-Chah-Nulth cultural knowledge and practices, yet reliant on her mobility outside of Nuu-Chah-Nulth territories: “We’re told there are women who work at home and stand close to the fire and there are women who stand with their backs to the fire and work with the men. That’s what Lee was trying to tell me. I still need to go home to get nurturing and so I feel
comfortable being in that place and I lean on the women at home who focus their work on that.” Chaw-win-is was named “boulder on the beach woman” and seated as one of the chief’s warriors in her community, in recognition of her role defending and reinvigorating her community. She is able to name violence and act in this warrior role more easily because she doesn’t live in her community, admitting that, as a result of internalized colonial power relations, it is harder for women who live in the community to be vocal about violence, and that different strategies are required for those who choose to stay and speak out. Thus, networks of reciprocal responsibility that are rooted in a set of locally-defined relationships and shared cultural frameworks are not necessarily reliant on the members of that network living in a shared geographic area. Indeed, as Chaw-win-is expresses, while her roles and responsibilities emerge from specific family and ancestral relations, colonialism has created political and social conditions that make it risky for her to do this work from within her own territories. She thus travels across those territorial lines while enacting her responsibilities.

However, the RespectED Program Shelley created recognizes the various steps required to make it safe for people to speak about violence while remaining in their own community. Within a long-term model of change, individual adults first gain the ability to name the violence of colonialism, historical violence and other factors that impact their current normalization of violence. After being able to talk about colonialism and understand what it means in real, lived, and embodied terms, the training then moves participants toward developing definitions of violence at an interpersonal level.

Many of the interview participants said that elders and other cultural practitioners were vital to the implementation of their initiatives, in part because violence was not seen as a ‘traditional’ way of life for Indigenous people. Elders are therefore vital in restoring cultural definitions and understandings of violence, bringing traditional teachings to contemporary realities.
7.3 What visibility means

At these scales of individual, family and community or Indigenous nation, efforts to gain visibility and recognition of violence has a different quality to recognition within Western law and society. Visibility is achieved within an intimate network of meaning defined by its members, rather than being defined within the text of law or colonial social norms. Indigenous legal technicians discussed the importance of naming violence, bringing language and definition of specific types of violence, in processes of making violence visible in order to denormalize it. Shelley Cardinal’s program RespectED is designed to work with each community’s own levels of understanding, histories of violence and ongoing experiences of violence in building individuals’ ability to give violence a name. Moving from “everybody knows but no one knows”, Natalie described her work with individual families and young women to bring words and names to the violence they experience. Natalie sees visibility as a way of “living beside” violence – being a witness to the violence by naming it, making it a “thing” that can be acknowledged. She also described this as truth-telling. Truth is something that has come to be irrelevant or beside the point in the criminal justice system, as something may be true but still fail to matter in the court system if it can’t be adequately proven. However, within local systems of meaning and networks of responsibility, truth-telling can be a powerful act of breaking the silence and denormalizing violence by creating new frames in which it can be made visible.

For some, visibility also entails getting beyond stereotypes about who can or cannot be a victim of violence. Importantly, the visibility named here are distinct from those discussed earlier in the historical account of the missing and murdered women discourse, in that the women themselves are able to set the terms for this visibility, using their own agency to raise the profile of this issue. In Barb’s own life, visibly or publicly naming the violence she faced was important because she is seen as a leader in the community and it sent the message that ‘violence can happen to anybody’. Making interpersonal violence visible alongside historical colonial violence, such as residential school abuse, displacement from the land, police negligence and other widespread forms of colonial violence, make violence visible in ways that everyone can identify with. This type of visibility demonstrates that “it’s everybody’s issue” (Barb), tied to specific
stories and people rather than being part of a generalized poster campaign using language that originates elsewhere. Uncovering stories of resistance to violence are also powerful ways of surfacing strength and survival strategies. This truth-telling is necessary because “there’s also a silence of the resistance to violence, I guess. Or the ways that women have fought back” (Natalie).

Making resistance louder and more persistent is part of truth-telling and creating new frames of reference for the development of Indigenous law. To this end, the arts are being used to make violence visible in ways that do not necessarily involve using words to categorize experience. Rather, artwork can create an emotional shift through people’s engagement with artwork that draws out both the violence and the beauty, the mourning and the possibilities for healing. Several Indigenous women artists have undertaken such efforts, which have moved across diverse sites to create a common form of visibility in different non-Indigenous and Indigenous community settings. As I write this dissertation, over 1700 moccasin tops (called vamps) which were primarily beaded by Indigenous women are being gathered by artist Christi Belcourt for the traveling exhibit Walking With Our Sisters\textsuperscript{20}. Her initial call was to gather 600, the official number of Indigenous women missing or murdered in Canada, but she received many more than expected. The intricate and beautiful beadwork expresses each individual artists’ own connection to and meaning around the issue of ‘missing and murdered women’, while expressing the beauty of their own strength and artistic vision. Christi Belcourt and the artists themselves posted photographs of the vamps on the internet, along with stories about the design. Many of the stories were about specific girls or women who had died or disappeared, while others were about traditional teachings specific to the artist’s own cultural background. These teachings about gender roles and cultural stories of respect brought attention to violence against women within diverse cultural frameworks, as each artist’s own cultural background formed the terms of visibility. This tension between the violence toward Indigenous women and the power, strength and agency of the Indigenous women artists connects the visibility of violence to the power of Indigenous women themselves to enact this visibility on their own terms.

\textsuperscript{20} Information on Walking with Our Sisters can be found on the project website: http://walkingwithoursisters.ca
The process of achieving visibility within this intimate scale is different from efforts of visibility in mainstream society or Canadian law, although some of the efforts (such as public marches) may look similar from the outside. Making violence visible within an individual relationship, family or group of peers can involve simple conversations, dialogue, and collaborative meaning-making. Each person is a part of the process of obtaining visibility, and can act as witnesses to the violence an individual or community may have experienced merely by being part of the collective process of naming.

Workshops or other formal processes of naming and education are also used at this scale. Culturally specific stories, words and artwork also raise the visibility of violence as part of broader expressions of Indigenous law and jurisdiction. In this way, the work of raising visibility within the scale of Indigenous communities is enfolded in broader cultural practices through which Indigeneity itself is sustained. This visibility is not dependent on individuals being in close physical or geographic proximity to one another, but the network can remain mobile, moving between various geo-legal spaces while carrying within them the terms and knowledge from the intimate legal networks to which they belong. For example, while Chaw-win-is does not work in her community, other Nuu-Chah-Nulth people who are part of the networks who witnessed or heard about the marches know that she is someone who shares a common understanding of violence within Nuu-Chah-Nulth terms. Thus, whether they connect with her over the internet, within Nuu-Chah-Nulth territories, or within the jurisdictional areas of other nations (like in Victoria, the territory of the Lekwungen people, where Chaw-win-is lives), the shared ability to recognize violence remains active.

These processes of recognition do not rely on powerful figures who set the terms of visibility, but rather entail drawing on the individual and collective agency of Indigenous people themselves. Indigenous people who have experienced interpersonal or physical violence are thus always defined as members of their Indigenous nations while making the violence against them visible. Rather than appealing to a powerful system in which they are ‘Indians’ asking for help from police, these forms of visibility entail appealing to a network of peers, loved ones, relatives or others with whom you share a common acknowledgement that violence is not acceptable.
Natalie shared a story which illustrates how categories of insider and outsider, or known and unknown technicians, are formed with an awareness of the violence of colonial law. She was talking with a woman at a community gather in a remote community, who said that a known sexual abuser who had been banned from the community was back in town. The woman said she had caught the offender climbing into her child’s window that morning, and called upon members of the community to get him out. Calling the police was simply not seen as a viable option, because “the offender you know is easier to deal with than the offender you don’t know”. In this case, the unknown offender was the police. This example makes apparent that the violence of the police, as representatives of Canadian law in Indigenous communities, are understood to be associated with violence rather than with safety, healing or justice. Additionally, appealing for recognition of violence from community members can result in immediate action (in this case, the offender being removed from her house, preventing him from causing further harm) where the police would, at the very least, take hours to arrive because they’re located at a distance.

### 7.4 Interrelated word and action of law

Linking the terms of recognition with action is another quality of Indigenous legal recognition that emerged within the interviews. Whereas Canadian law, and indeed Western law in general, is foundationally organized around the separation of legal text and the action arising from that text, in the examples of Indigenous anti-violence strategies, the interrelated word and action of law are integral to its meaning. This is seen across many diverse examples and scales of legal relations, as participants shared examples of people simply doing something, taking action, either in their own life, a friends’ life, or in their community, to address violence.

Helen described an older couple in her community who turned their home into a safe house where children could go if their parents were partying, or if someone was fleeing a dangerous situation. The couple’s ability to offer safety arose from their decision to take action around the lack of safe spaces in the community, and their decision to create such a space themselves. Rather than relying on some external
approval, funding or recognition, the need for a safe space was determined within the local community that they were a part of. “I don’t know if it’s effective [in stopping violence], but it’s a step in the right direction just in terms of it being a community making decisions for itself” (Helen). Shelley also talked about a safe house run by two elders in a fly-in community as an example of something community members can do themselves to address violence. She tells this story in training activities as part of a brainstorm of what individuals can do in their own community, despite their rising awareness of the enormity of violence. Although Shelley doesn’t advocate the creation of a separate legal system, she names the reality that the current Canadian legal system needs a lot of work and parallel systems are needed at the community level to increase safety. These efforts, then, turn attention away from trying to fix the Canadian legal system, and instead address violence through revitalizing cultural strengths. “Traditional systems of taking care of family and community, we need to act on those systems again. We need to ask, ‘how does it work in today’s world’” (Shelley).

While this example works independent of any government funding or technicians of Canadian law, others worked in tandem with the Canadian legal system, involving both members of an Indigenous community and police officers, Crown counsel and judges. These initiatives reveal potential connections between Canadian and Indigenous law, contributing to the work of Indigenous legal scholars’ efforts to close the gap between the two (Napoleon 2009). As previously described, the community court in Kamloops is one such example. Any Indigenous person charged with an offense that would be tried in provincial court (bringing a maximum sentence of two years or less) can choose to be tried in this court, not only members of the Secwepemc band. In collaboration with provincial court judges, the court invites Indigenous community members as equal participants in processes of sentencing offenders and working together to support the offender to see the sentence through. Through a group process that is open to all community members, including the offenders and their families as well as victims and their families, elders and other interested parties, sentences are determined collectively. The terms of this sentence, such as ordering an offender to drug and alcohol treatment or carrying out community service of some kind, take place within and among this very network of people involved in the sentencing (other than the judge, though the judge may develop close networks over time if one individual stays in the role
over many years). As Linda described, “It’s one way for us to be involved in the justice system and take our community members or other First Nations community members and say ‘we believe in you. You can change, and we’re here to help you’”. The word of legal decision and the enforcement and realization of that decision operate within the same network of legal actors.

The first case that was heard in the community court involved a prolific offender who, at only 30 years of age, already had 56 prior convictions and had served time in a federal penitentiary. Describing this first case, Linda said that many people did not want to spend time or energy on this man because they say him as ‘a lost cause’. In her role as a member of the community and the one coordinating the community court, Linda said she shifted the focus away from this individual toward the importance of the process.

In the sentencing circle, the man received a 22-month sentence, agreed to enter into a four-year contract with the Secwepemc band, and agreed to develop an employment and educational plan. Additionally, his sentence included identifying and working with a mentor in the community, as he wanted to become more involved in community events. The offender himself identified an increased community connection as part of dealing with the issues causing his criminal behavior. Additionally, he owes the band some money because he damaged one of the houses, and agreed to pay back whatever wasn’t paid for by insurance. Over the four years, the community court will come together to review his case, check in to see how he is doing and provide support. This ongoing process throughout the course of his sentence was not only designed to get updates on the progress of the offender, but to engage the community members in living up to their commitment to support his rehabilitation. In this case, the offender also wanted to apologize to the RCMP officers. Unfortunately, Linda said, one of the officers did not understand what was happening in the circle and talked to the media, saying it was ridiculous. Evidently, he was later reprimanded.

When looking for solutions to violence perpetrated by Indigenous people ourselves, and within our own families and communities, a number of Indigenous legal technicians spoke of the importance of mending and fostering relationships, seeing violence as a problem for the entire community to address together, rather than
separating out offenders as “the problem”. Given the history of colonial violence and the ongoing compounded violence of multiple socio-legal systems in the daily lives of Indigenous people, violence is not a result of an individual being ‘bad’ but is instead part of ongoing colonial relations reliant on distancing rather than intimacy.

The potential for the interrelated word and action of law to change norms around violence seems to be particularly powerful at the scale of interpersonal relationships and within families. Through conversation, ceremony, and relationship building among individuals and networks of individuals, norms around violence change in ways that are personally meaningful and mutually enforced. As families talk with one another about the violence they have experienced, and build a common framework of meaning, solutions emerge that are personally meaningful and possible. Strategies such as avoiding a particular violent uncle or agreeing to send a certain family member to treatment can have a lasting impact on intergenerational abuse in ways that may not be possible within the criminal justice system. The active involvement of individuals in creating legal meaning and action facilitates this possibility.

As others (Borrows) have written about oral traditions, this intimate relationship between the word and action of legal technicians means that laws, language and processes can change and adapt to changing socio-cultural and political conditions. Thus, the network of legal technicians interpret law differently in relation to changing circumstances, while drawing on longstanding place-based knowledge and longstanding responsibilities. The ‘text’ of law, then, takes on a different quality to that of Canadian law, which is created and interpreted by judges, made real by interpretations of police and others and enforced within a particular power dynamic. Although Canadian law is given meaning at the level of interpersonal relationships, it is also used to enforce and uphold particular relations of power. Even with Mary Ellen Turpel-Lafond, who is located within this system, her recommendations for change are only that recommendations. Within Indigenous legal pluralism, however, the will of the legal actors themselves have the potential to change legal norms.
7.5 Orientation toward the fires of Indigenous law

Central to the revitalization of pluralistic legal relations is coming to terms with the ongoing presence and power of Canadian law while putting energy toward the revitalization of Indigenous law.

It’s difficult not to give [Canadian law] a lot of power. Because the thing is that the system, we simply know that they have a lot of power, they simply do. But it’s helping people to recognize that it’s an outer power that we don’t have to submit to. It’s an outer power, it’s not our inner power. It’s like what do you know about your inner power? Because if you can build that in families and communities, then this power over here, you’re not as vulnerable to it. Because the reality is that system is always going to stay a system for offenders. It is probably always going to stay a punitive system. Because that’s the structure of it. (Shelley)

During the interview with Chaw-win-is, a central theoretical foundation of pluralistic Indigenous law came to light. She expressed that her work around violence, and with other Indigenous women, is “relentlessly coastal” in orientation. Rooted in the ontologies and epistemologies of coastal Indigenous peoples, and emerging from relationships within and among Indigenous nations, a ‘relentlessly coastal’ orientation is self-defined, rather than being defined in colonial terms.

Relentlessly coastal. Which means that...no one gets to decide who we are. We get to decide who we are. And we will do what we think is best for us. It’s not like we don’t know there’s this overarching legal system, the Canadian state, that’s affecting us. But we do know that if we don’t give life to our ways, and our way of thinking, if we don’t make it accessible to other women and treat them the way we want to be treated... (Chaw-win-is)

She described this approach as being oriented toward a fire in her community, and the diverse orientations that members of her community have to this same fire. Relatedly, Patricia Monture-Angus asserts that women of the communities, rather than national organizations or First Nations leadership, should be at the heart of reinvigorating Indigenous law and finding solutions to contemporary problems: “we need to organize ourselves within our communities and worry less about national political venues” (263). Although individual people within this network may work at varying
physical distances from Nuu-Chah-Nulth jurisdiction, the orientation toward the fire of Nuu-Chah-Nulth law remains. Thinking about the legal fire at the center of each Indigenous nation or community, individuals working in orientation toward these fires within a network of people similarly oriented toward the fire, the geographies of legal pluralism in BC begin to emerge. Rather than being oriented toward the federal fire of Canadian law as ‘Indians’ under the Indian Act, people within these networks are invigorating longstanding relationships to the land and to one another through enacting their orientation toward these diverse fires. Thus, solutions within one community or network are entirely distinct from the others, because the networks of meaning emerging from that fire are necessarily specific to that land.

While other interview participants did not explicitly talk about their orientation toward an Indigenous scale of law in the same way, they did express an orientation toward a local scale of legal order rooted in a particular connection to territory. This was not only true of individual Indigenous communities addressing violence within their own territories or jurisdiction, but also of urban Indigenous communities. The commonality here was being oriented toward a shared set of meanings and set of responsibilities among a network of people rooted in some way to this network, even as they move across space and time. For example, the obligations and promises men undertake as part of the Moosehide Campaign operate within a network of mobile individual men and their supporters, even as they move across various spaces. Because various networks of men are initiating Moosehide Campaigns in their own local communities, men may travel to another community and find their moose hide badge similarly read by the network of Indigenous men there. The meaning behind the moose hide may differ in some culturally specific ways, but the common thread across these sites is the promise to not be violent toward Indigenous girls and women and to call out other men if they are being violent. The orientation toward this common set of meanings emerging within the Moosehide Campaign are activated within this common orientation toward the fire of Indigenous legal orders. As Barb expressed, “through ceremony and a commitment to each other, it becomes law”.

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7.6 Beyond justice

Justice is a normative vision of the human spirit unfolding, a product of shared thoughts and consciousness. It is a product of a community’s beliefs and imagination. It is the shared consciousness that makes a person feel as if they belong to a community. It is the frontier line between power and imagination. Like all visions, it is subject to the evaluation of the community and to transformation. (Henderson 2002, 26)

None of the Indigenous legal technicians I spoke to saw the Canadian legal system as being about ‘justice’. As Shelley said, “The justice system was built for the offender. It’s a punitive system that was built for offenders, that’s who it was built for. It wasn’t actually built to provide support to anybody.” Helen expressed that we need to “stop pretending law has anything to do with justice”. Indigenous law was generally not talked about in terms of seeking ‘justice’ but in terms of changing the way we relate to one another, and addressing violence by mending relationships. When cases of violence are recognized by Canadian law, we must ask how to keep victims as safe as possible as they move through a punitive system that is designed to address the needs of offenders, keeping our perspective true to what the system really is. Even for those technicians working closely with police and other representatives of Canadian law, the abusive nature of the justice system was a given. In order to move beyond seeking ‘justice’ for violence, then, we must first come to terms with the reality that the Canadian legal system is never going to provide spaces for healing and violence prevention. Although she views Canadian law as a system of oppression, and sees the courts to be a tool of colonialism rather than of justice, Patricia Monture-Angus (1995) writes, “I still believe that there ought to exist a relationship between law and justice” (250).

Yet, Monture-Angus is clear in stating that she is not calling for an indigenized criminal justice system. Rather, looking for language beyond that of the criminal justice system, she sees the concept of ‘peacemaking’ as an English word that captures the essence of Aboriginal systems of social order. Peacemaking is “both family-based and spiritual” (256), bringing a set of values that is distinct from those underlying Canadian law. Healing, mending and reconnecting were prevalent themes shared in the interviews. This theme of healing was something that surprised me, and then I became somewhat
embarrassed that I had failed to ask questions more explicitly about healing. After all my years of talking about violence, I forgot to talk about healing. Natalie described her own process of realizing the specific spatial dynamics to violence and healing in rural communities, which is bound up in longstanding relationships to the land. Natalie began by talking about reclaiming spaces of violence in urban and rural areas, in which Indigenous girls are normally marginalized or are likely to associate with violence. These included a male dominated youth center and a rural residential school building that is now the site of the band office. Natalie then began to describe the spatial dynamics of violence and healing in rural areas that do not have these boundaried spaces of oppression:

Natalie: I also think there’s just...the land. In the same way as I understand how triggers come back, in small communities it’s not so much this sidewalk or that corner [that can trigger a response for someone who has experienced violence in that place.] When something happens there’s also a spatial...there’s something about that. I’m not quite sure but it more often happens outside in wilderness space, or being driven out of town. If I think of kids I knew in high school, they weren’t raped in concrete. There’s dirt. There’s trees. Even the police took them there, if I think of the stories I received there. Whereas here [in Vancouver], it was Clark and 12th, Kingsway, there were markers [of spaces of violence].

Me: It’s like there are no markers, so there are no spaces you’re potentially safe in.

Natalie: I was just going to say that. And yet that’s also the place that’s healing.

Natalie and others thus talked about turning their efforts to connecting themselves, their families and the people with whom they work to the healing qualities of the land. In doing so, principles and relationships of Indigenous law have the potential to heal the violent separations caused by colonial law, which disconnects Indigenous people from their territories, families and communities. People who have been moved through the system as offenders are often taken out of their communities and singled out as a criminal. A number of people expressed that given the disproportionate number of Indigenous people in custody, and the racial targeting they see by police, there is a need to mend these relationships with people who have been distanced from their communities as offenders.
Enacting Indigenous law is itself inherently about mending Indigenous peoples’ relationships with their territories, with one another and with themselves. Rather than appealing to the powerful system of Canadian law to save them, Indigenous law entails developing good relationships with one another in order to form a network of responsibility. This network is developed through continually enacting relationships based on a shared understanding of one another, paying attention to addressing emergent gaps as they arise.

7.7 Intimacy

As the process of analyzing the interviews unfolded, it struck me that not only was my own methodology emerging from an intimate relationship to the issues of violence, colonialism and law, but the work of the people I interviewed similarly emerged within their own intimate relationships. As became clear in the intermingling of stories of personal and family histories of violence, engagement with law, and working on these issues over many years, Indigenous law itself occurs within a scale of intimacy that is lacking in colonial law. As discussed in Chapter 2, colonial law has entailed violent distancing, removal, the creation of gaps, and a separation of word and action in its very foundational definition and identity. Canadian law has created categorical distinctions, and often-violent separations, between ‘Indians’ and Canadians, men and women, offenders and victims, reserve and non-reserve spaces. Law operates through a system in which powerful legal actors work to separate themselves from the average citizen in order to take on an authoritative role. Yet the examples of Indigenous solutions to violence unfolding among families and communities operated within intimate relationships and knowledge. It was because of past experiences of violence or witnessing violence, and being emotionally, spiritually and physically impacted by this violence, that many Indigenous legal technicians were committed to naming and responding to violence. It was also because of their intimate knowledge of the violence of law itself that they engaged in the work they did, even when they felt that it was futile to try to change ‘the system’.
As Greenwood (2013) notes, Indigenous ways of knowing and being in the world are often articulated in traditional languages and the arts rather than in the English language, yet Indigenous people find ourselves in situations “that demand expressions in knowledge systems different from the systems in which concepts originate. One of my colleagues uses the metaphor ‘hollering across the cultural divide’ to denote diverse cultural systems across which we try to communicate” (100). As we seek to reframe violence in terms which are recognizable to Canadian legal technicians, we are hollering across this cultural divide. Yet reorienting toward more intimate scales of meaning is possible, as the interviews have so powerfully shown. Greenwood goes on to explain the process of listening to elders’ stories; she enters into a relationship with the storyteller and the story, and through this relationship, she comes to know the contents of the story. The relationship is itself a process through which the story acquires meaning through her acts of hearing, feeling, imagining and reflecting. “At base, coming to know and to be is both individual and collective, both process and product, both internal and external, and originates in the energy of relational experiences” (100-101). Intimacy is an inherent aspect of the relational processes through which knowledge is created, shared and understood within this Indigenous epistemological framework.

Solutions operating at this scale may look very different from those used within other anti-violence frameworks, including feminist approaches to gender-based violence. For example, Natalie talked about her long-term work with a girl and her family, including the male offenders in that family. Although it was not named that she needed to work with the offenders, it became part of supporting that young woman in her choices to stay in contact with her family members. If maintaining family connections is important, a different range of options and actions are opened up than those purely based in a punitive model of justice. For example, a young woman who has been a victim of abuse in the past may need support finding safe housing, strategizing how to keep the offender out of her house, and accessing counselling. She may also need information about what choices are available to her - does she want to make a report to police? Does she want to go through the criminal justice approach? If not, what else can be done to repair harms within her own life and her family?

The orientation of Indigenous legal technicians toward an intimate network of people all working around the same fire of law means that solutions to violence have the
potential to emerge with a greater speed and meaning. This stands in contrast to police, social workers or counsellors operating within Canadian legal systems which operate over geographic or cultural distance. Indeed, the role of Indigenous legal technicians is often to bridge this distance through their own knowledge of the dual set of cultural norms. Not only are individual responses faster - that a neighbor can respond more quickly than the police who are traveling from an hour away – but the spatio-temporality of legal relations within this intimate network also make it possible to change norms around violence more easily.

The lives of the Indigenous legal technicians themselves are examples of this. As Linda, Freda and Barb shared, their own ability to name violence they experienced has led to changes within their own household and family. Their own process of denormalizing violence, naming it, and becoming a truth-teller and witness within their community has led to a number of changes in their own family and circle of friends. Indigenous legal technicians, then, become important agents of change in their place with dual understandings of Canadian and Indigenous socio-legal norms around violence. Within these pluralistic legal relations, individuals like Linda, Freda and Barb can play a pivotal role in making real changes in how violence is defined and responded to at various scales.

The violence of law has categorized ‘Indians’ as inherently violent. I hope that this research works instead to recategorize Indigenous people as inherently capable of intimacy, as Indigenous law is itself imbued with qualities and strategies for fostering intimacy. There is a nurturing quality to this approach that has the potential to shift Indigenous peoples’ legal consciousness in significant ways as we name our pluralistic legal relations. Rather than being subjects of an all-powerful colonial system of violence, we are subjects of both that system and of pluralistic, dynamic and overlapping systems of intimacy. Learning and talking more about this scale of law along with my colleagues has brought me much hope.
7.8 Historical memory on the land

Our previous way of living in community on the earth as Indigenous people was for centuries. So this is new. Like Vancouver is, what, 150 years old? We’re trying to figure out something that’s very, very new. So going back to our traditional way of being is like reaching our hand backward, it’s so fresh. (Helen)

The spatial nature of Indigenous peoples’ collective memory of violence is central to redefining violence and law within dynamics of legal pluralism. Natalie told a story about the presence of historical violence at a girls group event on the Kamloops Indian reserve called “up all night”. The event brought together local Indigenous girls and older women from the community. Following the girls group model, the cross-generational event created space for girls and women to share stories with one another, cook food, create art and socialize. As Natalie described:

We also heard the stories of the violence that happened there. So the girls wanted to do ghost stories and we sat outside in a circle and all the buildings are haunted. And they were very real stories they heard, you know, of the stuff that had happened because of residential school and the kids that were hurt, the bodies buried, so the ghost stories are alive in these spaces too. So the older women were telling the kids and they were saying, you know, don’t cry out at night and we sat outside and fully a ghost walked out. Like he just came. And we were all in the circle. I could describe him to a T. I could draw him as a witness. And he walked right by this group of probably sixteen of us, some were like 8, 9, 10 [years old], and Donna was there, in this circle right outside the hall. And he just disappeared. He walked right by us, didn’t look. And then the band security came by and we were sure his lights would show him and it didn’t. And all the computers came on in this office, it was all dark, and...no, no, no, it was so scary. [me: oh my goodness] We were hearing all these stories that were real. Like you talk about ghost stories, these were real stories. The stories were about the harm done. About residential school. About the children who walk around these places, and we all know who they are. And so we reclaimed that space though that night. We stayed up in it all night. And someone walked right by us. And it was okay. None of us freaked out, nobody left, not even the little kids. (Natalie)

One of the elders in the group advised the girls on how to talk to the ghosts, accepting that the violence of the past is still alive on the land and is something that must be lived beside and acknowledged. It is not something to be afraid of, but to speak
to and make visible. “We really do live and walk beside ghosts in those communities, if you believe in spirit. Not that those [histories] aren’t here in these urban spaces, but I really got to see in a way that I hadn’t realized how much they walk amongst us always. So you’re never forgetting who those kids were.” (Natalie)

Natalie related this ghostly presence to the importance of recognizing that within rural communities, violence has a different relationship to place. While the land may be a place of healing and a source of wisdom and knowledge, it is also a place where violence can and has occurred - not only the historical violence of residential schools and other horrors of colonialism, but the ongoing violence toward Indigenous people. As previously discussed, Natalie shared that in her experience working in both rural and urban areas, violence in rural areas is more likely to happen outside. It can happen anywhere. Reconciling the ghosts of historical violence within specific Indigenous jurisdictions can be part of defining violence at a local level, as oral histories of this violence are shared across the generations within the very spaces in which it took place. Again, being a witness to this violence helps to bring it into the present day identities and responsibilities of Indigenous people and others who are witness within these systems of law.

7.9 Redefining violence

As illustrated in numerous examples in the stories of naming or revealing violence shared by Indigenous legal technicians, the meanings and definitions of violence within pluralistic Indigenous legal relations are different than those within Canadian law. Alongside processes of naming interpersonal violence that is normatively defined as such within Canadian society (such as physical assault, sexual assault, and so on), the violence of law itself, historical and ongoing colonial violence and specific forms of racist and gendered violence come to form a distinct understanding of what ‘violence’ entails. Because Canadian law is not seen as a place to turn when interpersonal violence occurs, due to the threat of violence from legal actors or systems themselves, violence is not understood as being something defined within and managed by Canadian law.
For me, violence is still a term that I’m trying to sort through and figure out. But for me, the violence that’s being done has multiple levels, you know. Maybe there’s sort of a line of violence, so it goes from everyday violence of having to prepare our children, our children have to prepare themselves, like my son really wanting to cut his hair because of his need to fit in more as a social being was stronger. Maybe when he’s older he’ll grow it, but that is not right. I cry only because my son has to develop thick skin to meet the world. Already. And he’s five. So there’s those things. Violence is the dehumanization of our people in general. It’s walking around and having regular good Canadian folks tell me, ‘well you’re not Indian you’re only a half-breed’. To still hear those things to this day, it means that I’m not a person who you respectfully take the time to get to know. There’s the violence from our men within our communities, women towards women, we’re obviously wearing the impacts of colonialism everyday. It even impacts our notion of love! I heard somebody the other day talking about how our marriages were more pragmatic, and I get it, but it was also a reinforcement to outside society that we don’t know how to love, that we don’t have passion, that we wouldn’t be willing to kill for love and all that stuff. We’re whole people. And so that kind of violence that we swallow and treat each other in that way. That’s huge. And then there’s the violence of standing up in the warrior society and deciding to protect. And that was only in self-defence, you know, to protect from encroachment from RCMP, DFO, all of those things. There’s the broader state violence that is always hanging over whether we’re aware and conscious of it or not. (Chaw-win-is)

These categorizations of violence are not individualistic in nature, focused on a victim and an offender, as is the case of categorizations of crime as defined in the Canadian Criminal code and seen as normative in Canadian society. This western view of violent acts sees victims of violence as being individually impacted by the crime, which is labeled as trauma, PTSD and other such mental health labels within Western violence discourse and mental health literature. Instead, when individual and legal violence is understood as inherently connected in colonial relations, and when communities begin to redefine violence both in these terms and in terms that make sense within local systems of law, ‘violence’ categories fundamentally shift toward shared, collective and local terms. Although an individual might perpetrate violence, then, the entire family is responsible and must be involved in finding solutions. Although an individual may have been assaulted, that individual is not isolated out as a ‘victim’ or a ‘witness’ as they would be in Canadian law, but is instead situated in a network of relationships who have a shared stake in the violence. In the case of intergenerational violence, which is so prevalent in our communities, rather than isolating each individual
for counselling or to enact a court case as a ‘witness’ against the ‘perpetrator’, families can engage in collective processes of healing and reparation aimed at changing these patterns of abuse. Additionally, when a woman goes missing or is murdered, the impact on the family and future generations change the meaning of that violence from being interpersonal in nature, to being a wrong imposed on her broader network of relations. Categorizations of violence and its subjects, then, are transformed through a reorientation toward Indigenous or pluralistic ontologies of violence.

Additionally, violence was described as interconnected to the broad work of sustaining Indigenous communities over the long term.

I guess that’s where I see the land and the movement of salmon...that those issues are all connected to violence. And I don’t think I saw that as clearly before now. That my violence work now, for me, being a part of a wild salmon rally or a stop mining in Ruddick Creek is directly related to my work with Indigenous young women and violence or in my community or, you know, what I want for my daughter. Those things are much more interconnected now than I had ever seen, and, again, I don’t think our system is at all structured that way. Maybe people take time off to do that work or I don’t know if they even see it as part of their violence work or that that it might also be healing. (Natalie)

The realization of these interconnections were made more strongly to Natalie after returning to Vancouver to teach at UBC, as being in the urban space made her think about her connections to the land in the territories where she has lived, worked, and has family connections:

To me those things are much more interconnected now. I guess that’s the thing - spatially, the salmon are connected from Tum Tum, from where they are mining, and then they travelled here. You know, I’m here but I don’t feel that far away from [Secwepemc territories] now because I’m working on an issue that’s really important to there. So that keeps me connected as well to the community. And I guess the other piece is wanting to consider or think about what are the ways that we might learn or bring back some other ways to talk about violence, whether it’s the word heal or the word trauma or, you know, what are some ceremonies. You know, things are all connected. What are the medicines, the land, the ceremonies. It’s a much more holistic, interconnected approach. (Natalie)
It is important not to make sweeping statements about the absence of violence in these networks, as Indigenous law can be easily romanticized as inherently consensual. Indigenous legal traditions utilize distinct methods for addressing incidents in which boundaries have been crossed or wrongs have been committed, and many communities are undergoing their own processes of adapting these traditions to fit contemporary realities. As Chaw-win-is highlighted, historical boundaries around Nuu-Cha-Nulth territories were indeed defined and defended, such that trespassing without proper protocols of acknowledgement or permission had serious consequences:

I imagine we came together in times of crisis but we basically knew how to let each other carry on our business because we had pretty strict boundaries. You come in to this part and your head gets cut off, that’s basically it. And we might think of that as violent now but if we know the expectations and we’re clear about who we are and who we are in relation to this community and that community, then nobody gets up to funny business. And I think we need to act more like that. I think we still have the ability to do that but we need to call that up in ourselves, rather than calling up all the ugly stuff, which sometimes school does. It calls up this crisis in identity and ‘oh my god, the state is horrible! The state! The state! Capitalism! Blah, blah blah!’ It’s this noise and this conversation that goes on when what really needs to happen is we need to hold people up and say ‘you’re great, you can do it’. (Chaw-win-is)

While this example speaks to the consequence of crossing territorial boundaries without permission, she does not advocate for keeping Indigenous people within their own territories or keeping non-Indigenous people outside of these territories. Rather, she alludes to the need for Indigenous people to define for themselves approaches for dealing with conflict, methods of addressing pressing local concerns, and the terms of engagement with outside communities, as well as having the ability to enact consequences for not adhering to these terms.

Indigenous communities and people may also look to their own stories for the presence of teachings that may shift how certain acts are or are not categorized as ‘violence’. These stories provide insight both into how our teachings have been reworked and given new meaning within Canadian categorizations of violence, and may also provide opportunities for reclaiming these teachings as we redefine violence in terms that emerge from Indigenous ontologies. As I discussed in the opening pages of this dissertation, I have come to understand the violence perpetrated by dzunukwa within
Kwagiulth cosmology, as represented through my auntie’s artwork. As a Kwagiulth person, *dzunukwa’s* story illustrates the ways that some women are pushed to the fringes of our communities, potentially seen as a threat to our own children. In understanding the reasoning behind her actions, I have a greater understanding for why she might have to resort to killing human children to feed her own. Interestingly, the stories I have read and heard about *dzunukwa* have never used the word ‘violence’. Instead, her story is generally used as a way to teach children about being watchful when they’re playing on the beach away from other family members, and about being prepared to defend themselves if needed.

Another teaching about acts that are now deemed to be ‘violent’ in Canadian socio-legal terms are ritualistic cannibalism in our ceremonies known as the *hamatsa*, or taming of the wildman. Understood through the lens of western anthropology and subsequently of broader Canadian society, these practices were seen as proof that we were less evolved than Europeans. The supposedly ‘savage’ nature of this ‘violence’ against our own people (other humans) was integrated into racial categorizations that included our inherently violent nature. However, my teachings about the *hamatsa* is that the ritual eating of human flesh was used in ceremonies that very few Kwagiulth people were initiated into. Far from being the depraved eating of another person, the eating of human flesh was part of a specific ceremony which allowed the initiates to bridge the human and supernatural world in our cosmology. When understood in these terms, these actions are categorized in relation to Kwagiulth socio-legal meaning, and the Kwagiulth people performing these actions are no longer uncontrollable, violent savages. Instead, within the context of potlatch ceremonies and our broader ancestral responsibilities to our territories, they are part of reminding us of our connections beyond the flesh to the spirit world.

Witnessing the stories being shared by Indigenous legal technicians in this and the previous chapter, I am humbled by the persistent emotional, spiritual and physical work it takes to resist colonial violence. As these stories attest, individual Indigenous people all across these lands refuse to give in to the power of colonial legal regimes which try to confine us to spaces of naturalized violence. We are not merely subjects of the reserve, but subjects of vibrant, caring, healing communities in which we each play a vital role in upholding one another’s humanity. These stories provide only a glimpse in to
the daily actions being undertaken by Indigenous people to reinvigorate Indigenous socio-legal practices, but they point to the necessity to better account for these efforts in theorizations of law and space in ongoing colonial relations. In the final chapter of this dissertation, I will bring these conversations about Indigenous law together with the previous analysis of the colonialscape, asking how we might make sense of both the ongoing spatialization of legal violence and the potential interventions provided by the intimate relations of Indigenous law.
8. Indigenous Geographies of Power and Resistance: escaping justice wormholes

Law is most successful when it expresses the normative order of the people whom it serves. (Borrows 2010, 64)

I recently attended a funeral for a young woman my age who died as a result of long-term health problems. She was a member of the Lekwungen nation, with ancestry on her mother’s side from Tsaxis, where my father’s family is from. As I sat and listened to the songs being sung in her memory, I looked around the room and reflected on the space in which we had gathered to mourn. Yes, the funeral was taking place in an area legally deemed an Indian reserve by the federal government, and yes, the room was primarily filled with status Indians who were registered with the local band. I reflected on the fact that the thin walls and fluorescent lights in the building were likely approved by someone in Ottawa before they could be constructed. I also wondered why the dirt road outside was full of muddy potholes, and why the bathrooms were in a portable and not attached to the building itself. So were we in a colonially defined space?

As a speaker from Tsaxis stood up to take the floor, I reflected on the cultural frameworks that he and others called into being. He was speaking not as a status Indian, but as a Kwakwaka’wakw person, and a visitor here in Lekwungen territories. The speaker talked about his respect for the family and local community, and advised us to stay strong in our cultural practices in order to give our children something to hold on to. A group of elders rose to sing in the Kwakwa’la language, honoring the young woman in the culture of her mother’s family. It seemed the speakers’ legal consciousness had very little to do with Canada, but referenced the older and related orders of Indigenous law emerging both from their territorial relations and the ones in which we were situated.
Although we were on an Indian reserve, we were also in the Lekwungen territories, as visitors from our own Kwakwaka’wakw homelands.

It often seems easy for activists and scholars alike to forget that these older, deeper legal relationships with the ocean, the land and its Indigenous peoples, are always and everywhere an emergent possibility. While it is vital that critical scholars and activists invest their energy in understanding dominant relations of power, and their manifestation in creating particular kinds of spatio-legal relations, there is a great danger in further erasing Indigenous perspectives by ignoring their implications in how we theorize geographies of law. Recognizing Indigenous law as law requires a fundamental shift in dominant legal ontologies. As Monture-Angus (1995) writes, “Aboriginal justice must be seen to be a process, not a concept or an institution. Too frequently when conversations occur about Aboriginal justice systems, we all begin by imagining Aboriginal police officers, courts or tribunals, Aboriginal jails filled with Aboriginal staff and inmates. This is not an Aboriginal justice system” (257).

In this final chapter, I will discuss some broad implications that stem from the recognition of Indigenous law as coexisting with Canadian law in various spaces and relationships, particularly as it relates to the recategorization of violence. First, I will engage with the concept of justice wormholes (Osofsky 2008) as a way to understand how violence against Indigenous people is normalized through their construction as subjects of Indian reserves. I will then discuss how the recognition of Indigenous jurisdiction opens up the possibility for Indigenous people to escape the wormhole, recategorizing themselves and the violence against them within Indigenous ontologies of law rooted in intimacy rather than violence. Remaining focused on addressing material realities of violence, I use the example of sex workers as potential ‘missing and murdered women’ to explore how Indigenous legal subjectivities rooted in reciprocal relationships might offer solutions for preventing violence. Finally, I will discuss the role of individual legal technicians in closing justice wormholes by reorienting toward Indigenous norms, offering some personal reflections on the overall purpose of this project.
8.1 Reserves as justice wormholes

Returning to the foundational terms of this research discussed in the opening chapter, legal geography scholarship allows for a deeper engagement with the research findings' implications for reconceptualizing jurisdiction within colonized lands. Within the colonialscape, reserves function as delineated spaces designated for ‘Indians’, and governed through overlapping federal and provincial jurisdiction. These might be understood as anomalous zones, "a geographical area in which certain legal rules, otherwise regarded as embodying fundamental policies of the larger legal system, are locally suspended" (Neuman 1996, 1201). Yet, as I have discussed, reserves can be imagined anywhere ‘Indians’ travel throughout Canada, as sites in which normative mechanisms of Canadian law are suspended and this suspension is naturalized. I find Osofsky’s (2008) concept of justice wormholes useful for understanding how Indigenous people can be transported to spaces in which reserve logics are utilized to deny rights and normalize violence.

With a dual attention to space and time, justice wormholes “connote not only crushing force, but also transportation to a different spatio-temporal configuration” (Osofsky 2008, 118). Although justice wormholes are created through spatially distinct legal mechanisms, the wormholes lead to the same destination: Indian reserves. These spaces are not only naturalized as integral to the colonialscape, but are indeed necessary in order for normative colonial power relations to thrive. As Osofsky (2008) notes, justice wormholes allow for nation states like Canada to assert their authority while relying on exceptionalism with respect to the categorization of some legal subjects, such as ‘Indians’, “to create wormholes that threaten the possibility for justice” (145). While materially delineated Indian reserves continue to be reproduced across Canada via the Indian Act, mechanisms of the criminal justice system arising from the sovereignty of the Canadian government are also used to transport people imagined as ‘Indians’ to spaces defined by reserve logics. Thus, the reification of spatial boundaries and legal categories continue to “space out” (Blomley and Bakan 1992, 670) ‘Indians’ by virtue of their assigned geo-legal location within the jurisdiction of Canadian law.
Through examinations of specific technicalities of jurisdiction, scale and interlegality, legal geographers have shown how the application of territorially-defined rights work with and through jurisdictional gaps to deny rights to certain groups of people. Canadian criminal law functions through a rationale of separation and distancing, as evidenced in the many examples of individual Indigenous peoples’ engagement with technicians of Canadian law. As the Indigenous legal technicians discussed in the previous chapters, criminal law is not about justice or healing for victims, but relies on separating victims and offenders from technicians of Canadian law, as well as their families and communities. Criminal law gains its power and legitimacy through recategorizing individual acts of violence in ways which allow them to be objectively scrutinized by supposed experts. For Indigenous people, this scrutiny operates through justice wormholes which utilize reserve logics to normalize violence against Indigenous people while criminalizing them simultaneously. Indeed, recent statistics reflect that one third of the female prisoner population in Canada is Indigenous, as Indigenous women’s imprisonment has risen 84% in the past 10 years (Sapers 2013). When compared with the rates at which ‘justice’ has been achieved for Indigenous women’s victimization, the crushing force of justice wormholes becomes clear.

As the Indigenous legal technicians discussed, recognition of violence within Canadian law entails recategorizing our lives within a system reliant on a series of separations and removals – a series of broken relationships. The Canadian criminal justice system turns victims into witnesses – often ‘unreliable’ ones at that. Bodily violence such as bruises, sexual violations, and wounds become evidence to be exhibited, examined and questioned by people who have nothing invested in the lives of the people whose bodies have been violated, nor the potential reoccurrence of these bodily invasions. Within this system, young women who have been kidnapped, raped or killed become categorized as a file among other cases sitting on the desk of a police officer who may or may not have any understanding of Indigenous peoples’ lives and relations. It is to this system that people often turn after violence has occurred, despite the dehumanizing and helpless feelings that may ensue, and despite the fact that this system rests on the dismissal of our ancestors’ own laws within which our survival as a people is made possible. Still others do not turn to this system, as the threat of its crushing force compels them to deal with violence outside of formal legal means.
The mechanisms normatively understood as helping Indigenous people who have experienced violence have been exposed as integral to the perpetuation of violence. The underlying categorization of ‘Indian’ subjects is reproduced through everyday interpersonal experiences of both engagement with the justice system, and being rendered outside of the view of that system within dynamics of erasure. This erasure is not just imagined – it is materialized in the daily acts of abuse, murder and negligence that unfold in the bodies of our loved ones every day. When we stop believing in the myth of Canadian law as a protector of Indigenous people, and legal actors as helpers and caretakers of our loved ones, we are called upon to create other avenues for recognizing violence. Indeed, we have witnessed that individual Indigenous people are undertaking such measures in their communities, families and households ongoingly, yet these efforts remain untheorized and unrecognized as law. Changing norms around violence, then, entails shifting the terms in which we recognize both violence and law in socio-legal discourse. How law is categorized is itself culturally-defined, as the history of conquest demonstrates. Thus, in recategorizing law, we can recategorize Indigenous people on their own terms by looking beyond the erasure of the colonialscape to the deeper networks of relations which extend beyond and beneath European arrival. What is needed, then, is not new actions but a shift in the way law, space and society are theorized such that the ongoing everyday enactments of Indigenous law become recognized.

Osofsky (2008) also points out that justice wormholes operate through the interaction of legal technicians and legal systems, the recognition of which opens up possibilities for reconfiguring these interactions. Possibilities for justice hinge on whether Indigenous people can escape the exceptional categories in which they have been placed – that is, the colonial category of ‘Indian’. This research has shown that while Indigenous people are being transported constantly through the space/time relations of the reserve – a place constituted through normalized interpersonal and legal violence – we can simultaneously be constituted as subjects of Indigenous legal orders. The recognition of this always-present possibility has implications for how the legal consciousness and legal subjectivity of Indigenous people is conceptualized, as we are not only colonial subjects but also subjects of Indigenous socio-legal norms.
Recognizing the possibility of Indigenous legal jurisdiction within pluralistic legal relations allows us to question why the day to day lives of Indigenous people continue to be seen as governed only by Canadian legal orders which rely on violence and result in violence, rather than the intimate relations of pluralistic Indigenous law. As legal technicians, we can all ask ourselves what a reorientation toward the jurisdiction of Indigenous law might look like as we encounter situations of violence in our families and communities. As we have seen, Indigenous law relies on a network of individuals who are oriented toward the local fires of culturally grounded spatial relations, and the potential exists for everyone to be brought into these networks. Thus, even individuals who act as police officers or lawyers within Canadian law have the potential to reorient themselves as agents of Indigenous law, recognizing the teachings, stories, norms, and values through enacting their obligations as members of these networks. These are not necessarily competing systems, however this research has clearly shown that the violence of Canadian law is largely uninterested in fully recognizing Indigenous people’s humanity. Still, the possibility exists for individual technicians of Canadian law to also be technicians of Indigenous law, as indeed some of the technicians I interviewed themselves work within both systems and call upon police, judges and lawyers to become partners in pluralistic mechanisms such as community courts.

At this time, however, Indigenous law is not successfully performative among broader Canadian society, as Indigenous peoples’ subjectivity is still largely tied to colonial categories emerging from the Indian Act. Socio-legal scholars can contribute to making Indigenous categorizations more viable by recognizing their persistent presence in theorizations of law and space. There is an ethical imperative to not only recognize large scale or highly politicized assertions of Indigenous jurisdiction, such as in land use or treaty rights, but the smaller everyday level of our relationships which are constituted by networks of individuals. As these networks grow, as we orient ourselves toward the fires at the center of Indigenous law on the lands in which we live, we together hold the potential to rupture colonialscape logics in order to trouble the violence which has ensured its naturalization. Terra nullius, the frontier, Indian reserves – beneath and beyond these colonial spatialities lies the dreams of my ancestors, brought to life.
through my actions, and yours, and the actions we initiate in the spaces between us. These dreams are not realized through state approval. Indeed, not being visible to the state can be a benefit so that its potential is not undone by being enfolded into state logics. As seen in NWAC’s government-funded research on missing and murdered women, there is always a danger of being recategorized in colonial terms which undo the liberatory potential of these efforts.

In my childhood memories of visiting the Kwakwaka’wakw territories (also delineated as Indian reserves) where my father’s relatives live, two elements are always present: violence and ceremony. In the visit that stands out for me most strongly, I went to stay with my family so that I could participate in a memorial feast for one of my male relatives. After several days of ceremony involving all of my extended family working alongside one another, we relaxed, listened to music and hung out together. I remember going outside to the parking lot beside the bighouse to get some fresh air. Some of my teenaged cousins pulled up in a truck and hopped out, bloodied and angry, scrambled around to gather rocks, sticks and other large objects, and then sped away. A fight between youth from rival communities was happening in a nearby field, and those same cousins who had been dancing, singing and eating together during the past few days were now beating each other up.

I remember wondering at what point they stopped being part of a shared movement around the fire and became enemies from different villages. Were their perceptions of their obligations to their families, ancestors and one another confined to the ceremonial space of the bighouse? As I travelled home the next day, and for a long time after, I remained troubled by the fact that these youth so quickly changed their relationships from ones of respect to ones of animosity. Yet these tensions are present in many of the Indigenous communities I’ve worked with, as they navigate the internalized impacts of colonial oppression and the resurgence of their cultural, spiritual and legal identities as distinct Indigenous nations. I draw hope from hearing the stories shared during this research, which demonstrate that our relationships formed in mutual obligation to one another do not need to stop at the door of the bighouse. We can carry them forward wherever we travel, beyond the state-defined boundaries of the reserve, the province and the country of Canada. We can become subjects of spaces constituted
through our own legal relations wherever we decide to materialize and recognize their meaning.

### 8.2.1 Sex workers as my relations

As witnesses to the ongoing inability of the Canadian justice system to prevent violence through its mechanisms for recognition and ‘justice’, we are compelled to extend Indigenous legal networks into spaces in which violence is most expected, those continually being transformed into reserves through justice wormholes. One such space is those marked by the presence of Indigenous sex trade workers, especially street-level and informal sex trade economies. In my work on violence over the years, I have witnessed the continued silencing and marginalization of people working in the sex trade, which has only deepened as a result of the development of a public discourse around missing and murdered women. As we saw in the previous discussion of various court cases, inquiries, research reports and awareness campaigns, Indigenous sex workers are pushed to the periphery of public discussions about violence and safety. Well-intentioned community advocates call upon Canadian law to ‘save’ these women, while ignoring the voices of sex workers themselves, including women, trans and Two-Spirit people, and men. These efforts, I would argue, only contribute to keeping sex workers trapped within justice wormholes which constrain possibilities for justice, agency and safety. On a daily basis, sex workers – especially those working in street-level sex work, where Indigenous people are concentrated – are criminalized and arrested, while violence against them goes ignored. By utilizing the logics of the reserve which require government intervention and containment of Indigenous bodies, efforts to ‘save’ sex workers through increased legal power over their lives ensures their ongoing construction as subjects always beyond the normative protections of law. Visible only as criminalized women or victims, “their inclusion within the law as sex workers is simultaneously an act of exclusion” (Pratt 2005, 1059).

As was previously discussed, urban spatial rationales situate ‘Indians’ as ‘out of place’ as they continue to be shaped through whiteness (Razack 2002b), while providing a space in which violence has no witness (Sanchez 1997) as sex workers in urban areas are reduced to bare life through processes of legal abandonment (Pratt 2005). Yet a different set of spatial logics and spatio-legal mechanisms are used to deny rights to sex
workers in northern BC, small towns, Indian reserves and other non-urban spaces access to the protection of the justice system. I would suggest that although spaces reconfigure the reserve through different juridisdictional and socio-legal mechanisms, they each work to transport ‘Indians’ through justice wormholes to similar effect. In their day-to-day interactions with Indigenous people, individual technicians of Canadian law utilize these logics to reproduce justice wormholes which are naturalized as integral to the colonialscape. Indigenous people live with the ever-present possibility of being transported through these wormholes via interpersonal and intersystemic mechanisms which limit the ability for violence against them to be recognized as ‘out of place’.

For Indigenous sex workers, we have seen how access to legal protection from violence is denied through the actions and attitudes of individual police officers as well as the Canadian public. In rural areas, sex workers are simply invisible, and the violence they face continues to occur beyond the view of law. Only when Indigenous sex workers go missing or are found dead do they come to ‘matter’ within the discourse of missing and murdered women, which is based on remembrance and mourning.

These logics are also apparent in a recent shift away from age-specific legal categorical distinctions between sexually exploited youth (for people age 16 and under) and sex trade workers (individuals over age 16), toward the language of sexual trafficking. Since 2007, the framework of domestic trafficking has replaced sex work discourse in both government and activist circles in BC, supporting abolitionist stances on sex work. Claims that Indigenous women and girls, as a unified group, represent a high percentage of people who are domestically trafficked within BC and Canada have been created by merely replacing the language of sex work with that of trafficking to reframe previous research and statistics anew. In other words, what was previously called ‘sex work’ is now being called ‘sexual trafficking’, as evidence of the overrepresentation of Indigenous women in street level sex work is now recategorized as proof of domestic trafficking. As I have argued elsewhere (Hunt 2010, 2013), the conflation of sex work, sexual exploitation and trafficking creates one kind of victim whose involvement in sex work happens against her will. There is no possibility for choice or agency in this portrayal, as trafficking is, by definition, a form of exploitation often described as ‘modern day slavery’.
I am troubled by a discourse that leaves no possibility but for the intervention of powerful officials of Canadian law, particularly when sex workers themselves say that this portrayal results in further violence. Although the trafficking framework may be taken up by people who believe it will ensure violence against sex workers is taken more seriously, this belief is little more than blind faith in a justice system invested in the maintenance of colonial power relations which are inherently gendered and racialized. I fear that just as the laws against rape and murder fail to prevent this violence from being done to our loved ones, the trafficking laws will also fail to actually lessen violence while reinscribing sex workers’ victimization. As was described in Chapter 4, sex workers facing violence in the Downtown Eastside fought for years to make the brutal realities of murder against their neighbors ‘count’ within Canadian law and society. Now that a serial killer was locked up, national campaigns undertaken, and a discourse developed to address this violence, the specific spatial relations which shape violence in their lives has been pushed out of view. The Downtown Eastside thus remains a site where violence can occur without recognition, as it does on a regular basis against sex workers who continue to make this neighbourhood their home. At the heart of this perpetual erasure is the dehumanization of sex workers themselves, as their voices, lives and priorities, as well as their agency, desires and visions for safety, remain beyond the view of violence discourse. This is a troubling effect of the spatio-temporal warping accomplished by creating justice wormholes in which justice for sex workers continues to be denied.

Within relations of legal pluralism, however, the potential exists for each of us to see ourselves as operating within a network of responsibility to the sex workers in our communities. For many people, this is a radical idea, difficult to imagine in terms of our everyday interactions with one another because of how sex workers are categorized as ‘other’. However, I believe the mechanisms of Indigenous law described in the preceding chapters demonstrate that through recognizing individual Indigenous people who work in the sex trade under the jurisdiction of Indigenous law, new possibilities exist for shifting norms around violence. Rather than distancing ourselves from sex workers in order to shake off the stigma around their work and Indigenous women’s sexuality more broadly, I suggest we engage in the intimacy of Indigenous law, strengthening relationships among sex workers and others within our communities. Although I acknowledge that
lateral violence is always an emergent possibility and that sex workers, like other Indigenous people, face violence from within our own communities and families, I have hope in the possibilities held by a reorientation toward values that emerge from Indigenous or pluralistic, rather than purely colonial, socio-legal relations. Creating greater intimacy and strengthened relationships between Indigenous people and the sex workers in our communities will also enhance our ability to create new measures for addressing exploitation and abuse against sex workers on terms that are locally relevant. In remembering ‘the missing women’, people often recall that the women were mothers, aunties, and sisters. Yet when they are alive, sex workers are also mothers, aunties and sisters, so why are we not inviting them to sit across the table from us? How would the normalization of violence change if we were to create communities in which sex workers were not ‘out of place’? These changes do not rely on the actions of our official leaders or chiefs, but as I have seen in communities across BC, they can be enacted by a small network of people who are empowered to create change in their own homes, schools, streets and bighouses.

Whereas Canadian law currently criminalizes the activities of sex workers and, as I have discussed, holds few remedies for denormalizing violence against them, possibilities exist for rehumanizing Indigenous sex workers through their recognition within a network of reciprocal relationships. As has become evident in the realization of this research, witnessing the violences of law is one way that individuals can enact their obligations to one another within Indigenous legal frameworks. Recognizing one another within Indigenous legal jurisdiction opens up opportunities to escape justice wormholes, bringing Indigenous people into spaces which reference older and deeper networks of relation that do not rely on violence. Practically, this means not just waiting until another woman goes missing or is murdered, but taking proactive steps to prevent violence by lessening the distance between us today and creating spaces in which we can walk beside violence, be a witness to it and to the lives of those who normatively go unseen.

I thus contend that pluralistic understandings of law have the potential to change how we imagine geographies of violence. Instead of trying to fit ourselves in to categories that already matter within dominant society, Indigenous people can recall those categories that emerge from an older source of knowledge which is always at work underneath the geography of reserves, cities and towns we see now. For our humanity
arises not only from our ability to be recognized within the colonial archive or within the word of Canadian law, but at the everyday level of our relationships. It is in the interactions between Indigenous people and the technicians of Canadian law that the violence of colonial law is materialized. Law might be simultaneously understood as a powerful force with a far-off center of power, as well as a set of norms which are felt and enacted in the lives, bodies, homes and communities of individual people. In a settler society like Canada, recognizing and theorizing our pluralistic relationships disrupts the logics of the colonialscape, making visible Indigenous peoples’ emergent relationships to law.

8.3 Re-imagining ourselves

Despite the utter centrality of relationships to indigenous ways of being in the world, relationship remains a mutable concept, always geographically and contextually expressed and as diverse as the environments in which it, and associated knowledge(s), is rooted. (Greenwood 2013, 99)

In the preceding pages, I have detailed day-to-day realities of law and violence through the perspectives of a network of Indigenous people concerned with issues of violence. These perspectives begin to scratch the surface of the deep knowledge that is alive within diverse Indigenous communities in BC and all across Canada, as we find ways to navigate the violence of Canadian law while contending with the relentless realities of interpersonal violence in our lives. I hope that this research will encourage others to consider what these pluralistic legal relations offer to their theorizations of geography, law, power, colonialism and resistance. In particular, I hope that Indigenous people who are concerned with issues of self-governance will consider how law manifests at the level of day-to-day relations, not only within forums deemed politically significant, such as land use or self-governance. If we continue to look to Canadian law for answers to violence against our loved ones, we only retrench them in a system set up to naturalize our dehumanization. Although strategically necessary at times, we need to consider its inherent limits and its very real harms.
As discussed previously, while the individual deaths of Indigenous people might be highlighted in an academic paper or a poster campaign, many more go unseen. Recently, the news reported the sentencing of a man who admitted to killing two of the three young Indigenous girls whose deaths he was accused of. The news story did not mention that these girls were Indigenous, nor describe much about their families other than that they were disappointed the killer would be eligible for parole in only nine years. Tomorrow, another similar story might be reported, or there may be more interesting things with which to fill the pages of our newspapers. Regardless, the norms around violence will remain unchanged even in these fleeting moments of recognition.

Colonialism is thus reproduced through our everyday embodied interactions with representatives of Canadian law. Whereas Aboriginal rights have been interpreted through section 35(1) of the Canadian Constitution—which recognizes and affirms the pre-existing rights of Aboriginal people—and section 2a of the Charter of Rights and Freedoms which grants freedom of religion to all Canadians (Borrows 2010), as well as International Human and Indigenous Rights agreements (Chartrand 2001), I think it is imperative that more attention be given to the ways in which Indigenous peoples’ rights are shaped through their everyday interpersonal engagements with technicians of Canadian law. As I hope I have shown, the colonialscape is reproduced in these daily interactions which uphold socio-legal norms around violence, forever imagining ‘Indians’ as confined to spaces of expected violence.

As the participants in this research have generously outlined, the Canadian criminal justice system has little to do with healing or with justice. However, communities are engaging in acts which have the potential to change norms around violence within small networks, which I think have much to offer for both Indigenous and non-Indigenous people. Indeed, there is more work to be done to fully and deeply explore the potential for Indigenous law to create pathways out of the justice wormholes which transport us to the reserve, as we become transported instead to spaces shaped through our Indigenous socio-legal relations. What do these new understandings of law and violence mean in how we envision our homes, our families and communities? How do we reimagine the reserve, knowing that it is fundamentally a space shaped through violence? And what is the relationship between reserves and the deeper Indigenous territorialities which operate beneath and beyond the colonialscape? As we consider
these questions, we must recognize that the expressions of Indigenous law discussed here largely operate within spatial relations that are currently invisible to those who are not connected to the networks enacting them. The Indigenous spatio-legal ontologies which are enacted through Indigenous law have, in many ways, been minimized, obscured or erased through mechanisms of Canadian law, or reframing Indigenous law in Western terms. However, they remain active in the daily lives and ongoing legal and cultural practices of Indigenous people, which emerge from their longstanding relationships upon these lands. They may not all currently be understood as law, but, as these interviews have shown, they enact many of the qualities of law put forth by scholars of Indigenous law. While there is strength to be gained from engaging in practices which are seen only at a local level in order to protect cultural knowledge and retain a sense of control over their terms, my hope is that there is a potential for these spatial relations to become more viable as law by engaging in witnessing projects such as this one, as well as by expanding the networks of people who are invited to form a sense of responsibility to address violence within these pluralistic systems of law. For when they are brought into view, when the categorizations of this law are made visible, they threaten to rupture the assumed closure of dominant power relations. Whereas turning to Canadian law in response to violence often leaves us feeling helpless, and indeed does little to prevent future abuses, turning to one another proactively to reconfigure our relationships to violence has the potential to denaturalize the violence that underlies our erasure in ongoing processes of colonialism.

As a mixed-blood Kwakwaka’wakw woman, my own spatial orientation has always been toward the shoreline – not the ocean itself but the space where water meets land and light, where the tides turn all the elements together in an ever-present yet ever-changing jumble. This place of ever-present change is alive with the wealth of my ancestors, and holds the possibility for entry into conversation with the supernatural realm. Staring out from this place, I frequently think of sisiult, the double-headed sea serpent who can bring wealth to someone who is lucky enough to see it or can bring death by shapeshifting into a canoe, only to swallow those who ride in it. Sisiult was my grandmother’s crest, reminding me of our potential to transform ourselves into different forms in order to serve our communities and our own purposes. In my work on violence over the years, I have begun to see that we are in the process of transforming our legal
and social identities so that we now recognize one another not only as victims but also as agents of renewal. The time has come to take seriously our personal and collective potential for transformation, creating spaces of socio-legal change, collision and multiplicity in which we can reimagine our communities, ourselves and one another anew.
References

Aboriginal Healing Foundation. 2007. *Suicide Among Aboriginal People in Canada.* Ottawa, ON.


http://unpfip.blogspot.ca/p/framework-of-dominance-preliminary_03.html


-----. 2012. *Restoring the Honoring Circle: Taking a Stand Against Youth Sexual Exploitation.* New Westminster: Justice Institute of BC.


-----. 2006. *Violence in the Lives of Sexually Exploited Youth and Adult Sex Trade Workers in BC.* New Westminster: Justice Institute of BC.


----- 2012c. The Impact of Criminal Justice Funding Decisions on Children in B.C. Victoria, BC: BC Representative for Children and Youth.


