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SUBMISSIONS OF ELEANORE SUNCHILD, Q.C. TO THE HOUSE OF COMMONS STANDING COMMITTEE ON PUBLIC SAFETY AND NATIONAL SECURITY

STUDY ON SYSTEMIC RACISM IN POLICE SERVICES IN CANADA

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In 1885, eight Indigenous warriors were hanged for their participation in the 1885 Resistance. They were acts of survival during a forced dislocation and starvation.

The man who condemned them to death was the stipendiary magistrate Charles Borromee Rouleau. During the Resistance and prior to the trial of the eight warriors, Rouleau fled Battleford, then wired the Secretary of State from Spiritwood, Saskatchewan, “Got here safe with family Indians ransacked & plundered my house am left poor as a church mouse god save the Queen.” Following his return to Battleford and after sentencing the warriors to death, Rouleau was accused of bias. He had reportedly threatened that, “Every Indian and Half-breed and rebel brought before him after the insurrection was suppressed, would be sent to the gallows if possible.”

An investigation was conducted by the Department of Justice into possible bias, and despite no translation or legal representation afforded to the warriors during the proceedings, bias was not proven and the warriors were hanged with NWMP armed at the foot of the gallows. This injustice remains Canada’s largest mass hanging.

A small town in Saskatchewan bears Rouleau’s name. Yet, there are no towns named after Wandering Spirit or the other seven warriors. There is just a humble placard with their names. It was placed in the 1970s by students that uncovered where their bodies were unceremoniously deposited near the NWMP barracks.

This history has lived on in another way. Children from the Battleford Industrial School were taken to watch the hanging as a warning of “what would happen if one made trouble with the crown and to provide a lasting reminder of the white man’s power and authority.”

The mass hanging at Battleford, the children who were brought to witness it, is not a forgotten history. Indigenous people continue to live it. It remains part of a relationship between Indigenous people and the Crown that is rooted in colonization.

Colonization itself is premised on racist myths. There is the myth that Indigenous people were uncivilized, though we have diverse laws, customs, languages, art, music, religions, modes of living, economies, and community structures. There is the myth that the land was empty—*terra nullius*, though since time immemorial we have lived from the land and acted as stewards over it and its resources through complex trade networks and principles of sustainability. There is the myth that without Christianity we lacked morality, though we have sophisticated values and principles of conduct passed from our wisest to our youngest and most vulnerable members.

When those students were taken from the Battleford Industrial School to witness the hangings, they had already been taken from their parents and their communities. They had already been placed in an institution borne of these myths. The Indian Residential School system, the Indian education system generally which included Indian Day Schools, was designed to assimilate Indigenous people—to kill the Indian in the child. These Indian day schools and Indian residential schools were characterized by systemic neglect and trauma. There were more Indian residential schools in Saskatchewan, per capita, than anywhere else in the country. The last one here did not close until 1997. This is a history, a very recent history, that has only just come to light for many Canadians. Most Indigenous people always knew it but are just starting to talk about it.

The stories of these survivors constitutes one way we can learn the impact racism and racist myths embedded in our institutions have on individuals and communities. Children were called dirty, and savages. They were told their ceremonies were heathen and they were prohibited from speaking their languages. Many were subject to the most vicious forms of physical, sexual and cultural violence often by those charged to protect them. Many children died in Canada’s Indian Education System, many went missing, and many like Chanie Wenjack who died trying to escape and return home. Chanie Wenjack’s story is one of resistance to colonialism.

When children resisted going back or when parents were resistant to send their children to residential school, it was common to receive threats of police action from Indian Agents and

church officials to enforce compliance. The RCMP was complicit and directly involved in the compulsory attendance of Indigenous children in residential schools.

The justice system and police services in Canada have long been leveraged as a threat to Indigenous people, rather than for their protections. And, Indigenous people have long been treated differently by these institutions. There are many examples of this, too many to count, too many to ignore.

In 2000, two indigenous men died of freezing on the lonely outskirts of Saskatoon, Saskatchewan. Ten years earlier, a young Indigenous man named Neil Stonechild had died the same way. Inquiries were conducted into all three deaths. What was revealed during the formal inquiries and heightened media investigation was a practice in the Saskatoon Police Service dating back as early as 1976. The practice was known as “Starlight Tours”. Indigenous people, who were arrested by Saskatoon Police Service officers for alleged drunken or disorderly conduct, were driven to the outskirts of Saskatoon at night during the winter and then abandoned there to walk home, sometimes without sufficient clothing. We will never truly know how many times this happened.

Recently with the advent of social media and video recording on demand, some of this treatment has been thrust further into the spotlight. For example just this year, a young Indigenous man named Evan Penner was punched repeatedly on the ground by a Saskatoon Police Service Member in Saskatoon while he cried for help; and Allan Adam, the Chief of the Athabasca Chipewyan First Nation, was tackled, punched and then put in a headlock by a member of the RCMP in Fort McMurray, Alberta.

Such incidents, the ones that have managed to make the news, are just the tip of the iceberg. Many more are not spoken of. Many are dismissed or ignored. Yet all the incidents demonstrate the fractures in the relationship between Indigenous people, law enforcement and the justice system. It is a relationship characterized by distrust, anger, suspicion, and fear of law enforcement because law enforcement targets and discriminates against indigenous people without tangible accountability for conduct. This fractured relationship stretches all the way back to the hangings of those eight Indigenous warriors in Battleford, and the children brought to witness it. The present often bears striking similarities to the past.

Colten Boushie and Systemic Racism:

I have had the honour of representing Colten Boushie's family for the last four years. In no other case have I seen the fractured relationship manifest so clearly and so powerfully.

Colten Boushie was a twenty-two year old Cree/Nehiyaw man who was shot in the back of the head and killed by Gerald Stanley on Stanley's rural property near Biggar, Saskatchewan on August 9, 2016.

In response to the killing, private and public discrimination against Indigenous people was displayed fragrantly on television, social media, and news media. The shooting of Colten Boushie was at times applauded and Stanley cheered as a hero, with many essentially broadcasting that property was worth more than an Indigenous life. The Boushie family also experienced intense public scrutiny as they were repeatedly and persistently mocked about Mr. Boushie's death, referred to as terrible caregivers, and called greedy or degenerate. Mr. Boushie was also denigrated, likened to a drunk and a criminal. None of this was true or justified.

But it was the initial actions by the RCMP fueled these perceptions. The day Colten was shot, the RCMP provided Colten's mother, Debbie Baptiste a death notification that her son was deceased with approximately six police cruisers. An excessive number of police officers entered her trailer on Red Pheasant Cree Nation with weapons drawn and searching her premises. Officers told her "Your son is dead." Debbie then fell to the floor in disbelief. Instead of comfort, Debbie was asked if she had been drinking. There was no compassion or empathy displayed towards her or her sons or grandsons who were also present at her home the night that Colten was killed. Even the microwave was investigated and opened by the RCMP officers to verify her utterances that she had Colten's dinner in the microwave oven. This contingent of RCMP officers then exited her house quickly, not offering any support or compassion to the Boushie family. Further, lack of compassion was shown by RCMP officers when they approached the Boushie family for questioning at the wake that was held on Red Pheasant for late Colten Boushie. There were also reports that the RCMP were escorting Non-native individuals onto Red Pheasant First Nation to ensure their safety during this time, reinforcing the belief the Indigenous peoples on Red Pheasant First Nation and surrounding communities were dangerous.

The day after the shooting, on August 10, 2016, the RCMP issued a press release stating that a property related crime occurred in the RM of Biggar and that a life was lost. There was no mention that a young Colten Boushie was shot in the back of the head. In response, the Federation of Sovereign Indian Nations issued their own press release pointing out that the

RCMP release was prejudicial and allowed “the average person to draw their own conclusions that the shooting was somehow justified.” Damage from the RCMP had already been done to public perception.

The RCMP investigation also appeared to build on the presumptions in their early press release, with a measure of resources deployed more appropriately for a property crime investigation instead of a murder investigation. A blood splatter expert, for instance, was not brought onto the scene to examine crime scene, but rather, they were forced to rely on photographs to base their findings. The SUV that Colten Boushie was shot in was also left out in the rain for two day, likely washing away valuable evidence.

By the time of Stanley’s first court appearance on August 18th, 2016 in North Battleford, many Indigenous and non-Indigenous people gathered to express support for the family of Colten Boushie. Most demanded justice, not vengeance. However, people reported witnessing RCMP snipers on buildings adjacent to the courthouse, and the family of Stanley was escorted by the RCMP to the detachment for lunch, but not the victim’s family. The Boushie family also continued to be the subject of hate in social media posts, though no police resources were afforded for their protection or security at the first Court appearance of Stanley.

On the same day, Stanley was transported to the Court of Queen’s Bench in Battleford after pleading not guilty to the murder of Colten Boushie. Again, supporters gathered outside alongside a large RCMP presence. At the preliminary inquiry on April 3rd the following year, the RCMP secured an entire city block in North Battleford with another excessive police presence. Actions, importantly, matter; and the RCMP contingency left only after the Stanley family left the Courtroom, leaving the family of Colten Boushie behind.

Belinda Jackson was another victim of the RCMP and the justice system, though in a different way. She was an Indigenous woman who was traumatized by observing the killing of her friend. Yet, the RCMP arrested her, charged her with mischief, took her on a high-speed chase in the police cruiser, and then held her for 18 hours before obtaining a statement. Although, the charges were dropped. Ms. Jackson was then rebuked in the justice system on the stand because there were, understandably, inconsistencies with her testimony and the statement she gave to the RCMP.

Stanley was acquitted by the all-white jury of Second Degree murder and the lesser included offence of manslaughter. He was then immediately rushed out of the Courthouse by officers.

In the moments following the verdict, pickup trucks circled the courthouse in an intimidating fashion as their occupants celebrated Stanley.

Following the verdict, myself, the Boushie family, members of the public, scholars and renowned members of the bar believed an appeal of the verdict was warranted based on a number of compellingly appealable issues that arose during the proceedings.

Instead, despite public concerns, the Government of Saskatchewan failed to appeal and only took one concrete action in response to the trial and verdict. It passed amendments that strengthened trespass laws. This had the deleterious effect of wrongly affirming for many that Colten was ultimately responsible for his own death.

Further, underlying racism of RCMP members was also revealed in a Facebook group used by police officers across Canada. The most offensive comments were posted by RCMP officers, and by some who were reportedly still serving on the force. They wrote,

“This should never have been allowed to be about race...crimes were committed and a jury found the man not guilty in protecting his home and family,”

“Too bad the kid died but he got what he deserved.”

“How many of us work on or near reserves and are getting fed up with the race card being used every time someone gets caught breaking the law?”

“The CC (Criminal Code) is there to protect the criminals and there’s a growing wave of hard working people who are sick of being victims of crime without real justice.”

We will never know if the verdict would have been different if there was an Indigenous juror present during the Stanley trial. We will never know if the verdict would have been different if the RCMP handled the investigation diligently and objectively. We will never know if the verdict would have been different if racial myths and stereotypes were challenged, debunked, and avoided; or if Indigenous witnesses were treated fairly. But we do know that this case was forever stained by the overt and systemic racism of the RCMP.

Since Colten died the Boushie family has dedicated considerable time and effort to advance changes and reforms to better ensure no other person or family faces the type of discrimination, racism, and injustice like Colten and his family endured from law enforcement and the justice system.

The family of Colten Boushie, for example, spoke at the 17th session of the United Nations Permanent Forum on Indigenous Issues. There, the family called for the Special Rapporteur and the Expert Mechanism on the Rights of Indigenous Peoples to undertake a study on racism and discrimination against Indigenous Peoples with the judicial and legal systems in Canada. They also asked that the Special Rapporteur meet with the Boushie family to address

the specific injustices experienced during the Stanley trial. We continue to urge that such an independent investigation by the Special Rapporteur be conducted.

The family of Colten Boushie also lobbied the federal government to eliminate peremptory challenges which the Federal government did with the enactment of Bill C-75. Notably last month, myself, and lawyer Chris Murphy intervened at the Supreme Court of Canada on behalf of Debbie Baptiste in the case of *R v Chouhan*. The Chouhan case challenged the constitutionality of Bill C-75. The Supreme Court of Canada, however, upheld the constitutionality of Bill C-75 and the elimination of peremptory challenges. We continue to urge for reforms in the criminal justice system that expand the participation of Indigenous people.

The family of Colten Boushie continues to demand a full public inquiry or a Royal Commission into the death of Colten Boushie and the subsequent trial of Gerald Stanley. To this day, details surrounding the investigation into Colten Boushie's death remain misrepresented, conflicting, and often marred by racial discrimination. A fulsome and accurate public inquiry or Royal Commission into the circumstances of what happened is essential to shed light on the systemic racism experienced by Indigenous people. I believe the family of Colten Boushie deserve no less.

The Boushie family continues to wait on the Civilian Review and Complaint Commission's review and its investigation into the Chairperson-initiated complaint concerning the conduct of certain RCMP members involved in the investigation of the death of Colten Boushie and the events that followed. Two years have passed since this complaint was initiated, and the RCMP has had the report in their possession for almost a year. The family has been told that the RCMP Commissioner will respond to the CRCC's interim report in early-December 2020, however, this process has been both long and difficult for the family. Equally problematic is that high ranking RCMP officers lack knowledge concerning the presence of systemic racism in the RCMP, even in light of being told the nature of the complaint of the family of Colten Boushie.

Some recommendations include, but are not limited to:

- Officers should receive culturally specific training which includes direct involvement with the Indigenous communities they intend to serve.
- Development of an Independent Oversight Body of Police Services in consultation with local Indigenous groups, and include Indigenous investigators and decision-makers, to ensure that police services are held accountable for wrongful, negligent, reckless, or discriminatory behaviour.

- Access to justice initiatives should be expanded for better Indigenous participation and more meaningful representation of Indigenous people. This would include historical and cultural training for all police services, legal aid organizations, court-appointed counsel, court workers, court staff, and the judiciary.
- Victims services should be expanded to include specific Indigenous resources while delivering better information and support to victims and their families throughout proceedings in which they have an interest.

The death of Colten Boushie and the trial of Gerald Stanley serves as only one stark example of the failure of the police and the justice system to treat Indigenous people fairly, with dignity and respect, and that shines a light on the systemic racism that exists within Canadian Police Services. To be clear, systemic racism is not confined to this instance. It is pervasive, and it is well-recognized by Indigenous people. Colten's memories weaves into a living tapestry of injustice that includes the memories of Neil Stonechild, Tina Fontaine, Chantel Moore, the eight Indigenous warriors who were hung in 1876, and countless others whose experiences, when placed together, tell both the ongoing story of colonization, and of systemic racism.

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