

**The Indigenous Youth Over-Incarceration Paradigm: Perspectives from Canada, Australia
and New Zealand**

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Abstract

The overrepresentation of Indigenous peoples in custody has been a relevant concern throughout Canada's history. However, in recent decades, the paradigm has shifted to a younger subset of the population. The overincarceration of Indigenous youth is now prevailing across Anglo-settler colonized nations such as: Canada, Australia and New Zealand.

The overincarceration of Indigenous youth in the Australian justice system is paralleled in Canada and far worse than the situation in New Zealand. The significant decrease in Māori youth incarceration in New Zealand warrants further review. This thesis comprehensively explores the progress made towards Australia's Closing the Gap Outcome 11 as a parallel to Canada's Call to Action 38 response. In doing so, this study limits to culturally responsive interventions administered through the government. In drawing parallels to New Zealand, recommendations are made in order to move toward an equitable justice system. This study utilizes a descriptive approach and provides an in-depth summary of the current state of the overincarceration paradigm prevalent in Canada and Australia with perspectives from New Zealand in order to recommend a path forward.

Land Acknowledgement

With respect, regard and gratitude, I acknowledge the ancestral home of the Treaty 7 signatories, including the five First Nations: The Siksika (Blackfoot), Kainai (Blood), Piikani (Peigan), Îethka Stoney-Nakoda, and Tsuut'ina (Sarcee) Nations, consisting of the Chiniki, Bearspaw and Good Stoney Bands. The City of Calgary is also the homeland of the historic Northwest Métis and the Otipemisiwak Métis Government, Métis Nation Battle River Territory, Nose Hill Métis District 5 and Elbow Métis District 6. In researching First Nations in Canada, Australia and New Zealand, I acknowledge the unique and distinct cultures, languages and histories of the land's first inhabitants.

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The Indigenous Youth Over-Incarceration Paradigm: Perspectives from Canada, Australia and New Zealand

The overrepresentation of Indigenous youth in the criminal justice system is a relevant issue prevalent across Anglo-settler colonized nations such as: Canada, Australia and New Zealand (Hamilton et al., 2020). In Canada, the term "Indigenous" is commonly employed to refer to the land's initial inhabitants, which encompasses a diverse array of peoples, including the First Nations, the Inuit and the Métis (Okpalauwaekwe et al., 2022). As with First Nations in Australia, these groups are subdivided into hundreds of communities nationwide. Aboriginal and Torres Strait Islander people are Australia's first peoples, they comprise hundreds of groups with distinct languages, histories and cultural traditions (He et al., 2023; Shay et al., 2024). In the New Zealand (Aotearoa) context, the Māori are the land's first inhabitants referred to as Indigenous peoples (Hamley et al., 2023). Hereafter, "Indigenous" and "Aboriginal" will be used interchangeably to refer to First Nations in Canada, Australia and New Zealand respectfully.

In Canada, Indigenous youth are the youngest population group, with over 50% of Indigenous youth under the age of 25 (Okpalauwaekwe et al., 2022). However, Indigenous youth also accounted for 50% of youth admissions to custody in 2020/2021, while representing about 8% of the total youth population (Statistics Canada, 2022). Similarly in Australia, Indigenous Australian youth (under 25) comprise over 50% of the total Indigenous population but accounted for 50% of all young people under supervision on an average night in the June quarter of 2022 (Australian Institute of Health & Welfare, 2022; Shay et al., 2024). Whilst representing 6% of all youth aged 10-17, Aboriginal youth in Australia were 20 times more likely than non-Aboriginal youth to be under youth justice supervision on any given night (Australian Institute of Health & Welfare, 2022).

The overincarceration of Indigenous youth in the Australian justice system is paralleled in Canada and far worse than the situation in New Zealand (Webb et al., 2023). In fact, in New Zealand, Māori under the age of 20 are now less likely to enter prison than any generation over

the last 100 years (Cook, 2023; Toki, 2018). The Māori youth prison population (under 20) has fallen from 38% in 1980 to 1.6% in 2022 (Cook, 2023). The significant decrease in Māori youth incarceration in New Zealand warrants further review. Despite the myriad of systematic reviews published on the topic of youth crime and incarceration more generally, few of these have attempted to identify and relate to Indigenous youth (Pfeifer et al., 2018; Hamilton et al., 2020).

In addition to the dearth of scholarly work on Indigenous youth crime, there is an absence of comprehensive reviews from the international perspective (Pfeifer et al., 2018; Sittner & Estes, 2023; Webb, 2022). However, a large sum of interventions have been implemented across all three countries and there are a number of promising system-based initiatives that warrant review (Pfeifer et al., 2018; Webb, 2022). The need for a review on this issue is especially significant given the prevalent overincarceration paradigm seen across Canada and Australia, with New Zealand beginning to see major change (Cunneen, 2020).

Although much of the literature provides important empirical information, very few articles identify gaps in the research literature or formalized proposals in order to move forward towards an increasingly equitable justice system (Sittner & Estes, 2023; Webb, 2022; Webb et al., 2023). This study will seek to provide increased insight regarding the overincarceration paradigm from an international perspective and fill gaps in the literature by providing a proposed framework for the future. Through a comprehensive review of these initiatives, this study explores the current state of the paradigm in Canada and Australia with a critical look at New Zealand's approach to significantly reduce young Māori overincarceration.

Research Questions, Aims and Objectives

The objective of this thesis is to research and explore the current state of Indigenous youth incarceration in Canada, Australia and New Zealand in order to cross examine, compare and draw parallels to recommend a path forward for the prevalent issue of overincarceration. There are three questions I have attempted to answer: 1. Why are Indigenous youth populations

in custody continuously rising while non-Indigenous youth populations continue to decline in Canada and Australia? 2. What is currently being done in Canada and Australia to mitigate the overrepresentation of Indigenous youth? 3. What are the current recommendations provided and what seems to be working for New Zealand that could be applied in Canada and Australia?

There will be a three step approach utilized in this study in order to answer the research questions. Firstly, a comprehensive analysis for the current state of the issue in Canada, Australia and New Zealand is provided, followed by an examination of the culturally responsive government interventions already in place. This looks at funding, programs and frameworks already being utilized by the government to circumvent the issue. Finally, recommendations put forward from various sources are explored in an attempt to guide the prospective governments in Canada and Australia while drawing parallels from New Zealand's restorative framework to addressing the Indigenous youth overincarceration paradigm.

Methodology

Data Collection, Analysis and Design

This research paper focuses on providing an insightful summary of the current state of overincarceration among Indigenous youth in Canada and Australia, while also taking a critical look at New Zealand's approach towards significantly reducing the number of young Māori entering the justice system. The study adopts a descriptive design, enabling a comprehensive description of the paradigm and facilitating parallel comparisons between countries. The research methodology involves a semi-systematic literature review, which critically analyzes the most recent and relevant scholarly literature on the subject matter. Furthermore, the purposive sampling method is employed to review scholarly research on the overincarceration paradigm.

In terms of data collection, this study focuses on secondary data collection by utilizing peer-reviewed journal articles, news articles, published books, government reports, webpages, media reports, book chapters and case studies. This multi-disciplinary research approach allows

for the collection of different types of data contributing to the overall findings. In order to ensure the relevance and accuracy of all data used in this study, a pre-screening process will be employed. This will involve a thorough reading of the abstracts of journal articles, book chapters, and reports. By identifying common themes and patterns, similarities and differences among sources of data will be compared. The identification of common themes will further ensure the relevance and accuracy of all data utilized in this study.

Data sources include: Google Scholar, Mount Royal University library database, Taylor and Francis Online, Sage Journals, ProQuest, JSTOR, Statistics Canada, Australian Bureau of Statistics, etc. Keywords used to find relevant data include: “Indigenous youth over-incarceration”, “Indigenous youth overrepresentation in custody”, “Aboriginal youth in custody Australia”, “Canada youth over-incarceration”, “Maori youth crime”, “New Zealand Maori youth”. For the exclusion criteria, any journal article, book chapter or report published before 2015 is excluded from the study in order to ensure relevancy of results. In terms of journal articles, only peer-reviewed scholarly papers published in English were utilized to maintain standardization and credibility.

Limitations

Despite efforts to incorporate recent and relevant journal articles, book chapters, reports, and statistics in this study, the scope of research analyzed was limited due to a semi-systematic literature review conducted within a restricted time frame. The strict time frame also hindered an extensive analysis of specific Indigenous groups within each country, which could have provided a more comprehensive and far-reaching evaluation. It is also necessary to acknowledge my personal biases as a constraint, which may have affected the scope of data collected. Due to researcher bias, data not supporting my research questions may have been unintentionally omitted. Furthermore, the availability of data was a limiting factor as this study heavily utilized government administered and reported statistics. In attempting to draw parallels between all three countries, the lack of standardized data prevented an extensive analysis.

The Current State of the Issue

Youth justice systems globally accredit various narratives, such as; welfare, public safety, child protection, development, punishment and restoration (Hamilton et al., 2020; Mackenzie, 2020). However, the prevailing models focus on punitive justice and correctionalism, which prioritize proportionate punishment, administration of accountability and sentencing, with the intent to control and correct a young person's behavior (Barmaki, 2023; Cunneen, 2020). Such models assume that young people make rational choices and offend with free will, which necessitates discipline, control and accountability for their actions (Webb et al., 2023). However, it must be pointed out that Western criminal justice systems and particularly their diversion practices, do not realistically consider that youth with Fetal Alcohol Spectrum Disorder (FASD), Post Traumatic Stress Disorder (PTSD) or other psychological disorders do not mature out of crime or respond to desistance from offending (Dellar et al., 2022; Hamilton et al., 2020).

There are several factors contributing to the disproportionate incarceration of Indigenous youth in settler colonial countries (Sittner & Estes, 2023; Webb, 2022). These include the abandonment of traditional lifestyles and the presence of systemic and institutional discrimination and racism (Hautala & Sittner, 2019). It is essential to acknowledge the vulnerability of justice-involved youth who are often struggling with mental health disorders, conduct disorders, substance abuse and self-harming tendencies (Haysom et al., 2023). Studies worldwide have established a strong correlation between mental health problems and criminal behavior, particularly among Indigenous youth, who exhibit higher rates of neurocognitive and intellectual disabilities, including FASD and PTSD (Haysom et al., 2023; He et al., 2023; Lockwood et al., 2018).

Youth incarceration, in general, has devastating effects on a youth's transition to adulthood (Hautala & Sittner, 2019; McCuish & Corrado, 2018). Utilizing the life course perspective, we can begin to understand the negative consequences Indigenous youth face at a critical turning point in their lives that come from being involved in the criminal justice system

(O'Brien et al., 2023). In a study conducted by Sittner and Estes (2023), the researchers found that youth justice involvement critically affects later family stability, mental and physical health, socio-economic status and employment. In their sample of 735 Indigenous youth, 45% of the sample reported being arrested at least once between the ages of 10 and 19. Sittner and Estes (2023) found that being arrested once in adolescence was correlated with lower rates of full-time employment and income later on in life. This can be, in part, related to the lack of education the average Indigenous youth obtains (Rudolph, 2021).

According to Heo (2019), the overrepresentation of Indigenous youth is a “perplexing and complicated issue” that generally boils down to two hypotheses; differential involvement and differential treatment (p. 8). The former suggests that minority youth are overrepresented in the system due to their higher involvement in crime; the latter posits that decision-making processes operate differently for members of different ethnicities at various stages of criminal justice processing (Heo, 2019). Although the plausible answer in explaining the overrepresentation would be in support of the differential involvement hypothesis. Heo (2019) concludes, through various studies conducted by researchers, that involvement alone cannot explain the overincarceration because non-Indigenous youth commit the same offenses, but come into contact with the police far less compared to Indigenous youth.

Similarly, in a study conducted by McCuish and Corrado (2018), the researchers found that Indigenous youth faced a higher number of social adversities compared to their White counterparts. While, in theory, this could lead to a higher likelihood of persistent offending among Indigenous youth, there was no significant difference between Indigenous and White youth in terms of their association with a specific offending trajectory measured between the ages of 12 and 29 (McCuish & Corrado, 2018). Similar findings have been concluded within the Australian research context (Cunneen et al., 2021; Dellar et al., 2022; He et al., 2023; O'Brien, 2021; Warner et al., 2022).

Upon reviewing the international literature on factors contributing to Indigenous youth incarceration, it is worth noting that discrimination is a significant contributing factor to the overincarceration paradigm (Mackenzie, 2020; O'Brien et al., 2023). Discriminatory policies and practices have been observed across youth justice organizations, courts and police (Samuels-Wortley, 2022). As the first point of contact for Indigenous youth who have engaged in offending behavior, the police have garnered substantial attention from researchers examining the impact of bias on frontline officers' decision-making (Brown, 2019; Samuels-Wortley, 2022).

Canada's Inherent Issues

Studies suggest that Indigenous youth in Canada are subject to disproportionate levels of arbitrary searches, stops, arrests and unnecessary use of force and violence. Canada's history of colonialism has left Indigenous communities in states of disrepair, wherein Indigenous youth are exposed to social conditions that are conducive to crime (Cesaroni et al., 2019; Heo, 2019). Once they encounter the justice system, they are then confronted with discriminatory assessments that increase their likelihood of arrest (Ferguson et al., 2021). Under the Youth Criminal Justice Act (YCJA), police are obliged to handle minor offenses through diversion. However, studies have demonstrated that non-Indigenous youth are more frequently diverted from the justice system compared to their Indigenous counterparts due to contextual factors, like previous failure of extrajudicial measures (Heo, 2019; Pfeifer et al., 2018).

The YCJA was established in 2003 to govern the treatment of Canadian youth aged 12 to 17 within the criminal justice system (Heo, 2019; Pfeifer et al., 2018). The YCJA recognizes that young people possess a diminished level of moral culpability and therefore provides a separate justice system based on the principle of diminished moral blameworthiness (Jackson, 2015). The YCJA acknowledges the unique risks and needs of Indigenous youth and includes special provisions to address them (Cesaroni et al., 2019). While sections 4 and 5 of the YCJA do not specifically target Indigenous youth, several provinces have used them as a basis to create Indigenous-specific programs (Cesaroni et al., 2019; Heo, 2019). Section 38 of the

YCJA, which mirrors section 718.2(e) of the *Criminal Code*, places greater emphasis on the needs of Indigenous youth and directs courts to consider their unique circumstances when sentencing offenders (Heo, 2019; Pfeifer et al., 2018). These provisions were created in response to the overincarceration crisis amongst Indigenous youth (Barmaki, 2023).

For centuries, the Canadian police force has been charged with moving various culturally assimilative and destructive policies into action, yielding a long history of distrust and contempt (O'Brien et al., 2023). Today, Canadian police officers are accorded substantial discretionary power in how best to maintain order on the street. However, the viewpoint that Indigenous peoples are violent and criminal still exists (Barker et al., 2015; Nichols, 2018). Prior research has found that Indigenous young people are more likely to be dealt punitive punishments as opposed to warnings compared to their non-Indigenous counterparts, independent of other practices, such as drug use patterns (Lockwood et al., 2018; Mackenzie, 2020; Nichols, 2018; Samuels-Wortley, 2022).

Currently, Indigenous youth are overrepresented in custody and the numbers are increasing. Indigenous youth accounted for one-half (50%) of youth admissions to custody in 2020/2021, while representing about 8% of the youth population (Statistics Canada, 2022). Among the eight jurisdictions that have reported correctional admissions consistently over the last decade, the proportion of Indigenous youth admissions to correctional services increased from 26% in 2007/2008 to 43% in 2017/2018 (Statistics Canada, 2022). Indigenous youth are overrepresented in both custody and community supervision, making up 48% of custody admissions and 39% of community admissions. Compared to Indigenous adults who accounted for 30% of admissions to provincial/territorial custody and 29% of admissions to federal custody, while representing 4% of the Canadian adult population (Statistics Canada, 2022).

Australia's Failure

Research examining the myriad of challenges facing Indigenous people throughout the world indicates that, for many, the issue of colonization is an important and salient contributing

factor (Hamilton et al., 2020; Barmaki, 2023). In Australia, the fabric of Aboriginal and Torres Strait law and society was disrupted by the intrusion of white settlers, who advanced assimilationist policies and practices like the forced removal of children from their families and compulsory land relinquishment (Brown, 2019). This resulted in a pattern of incarceration, which is a situation that increases the likelihood that colonization-informed trauma will recommence (Cunneen, 2020; Webb, 2022).

In 2022, the average rate of Aboriginal young people aged between 10-17 years in detention per day at the national level was 29.8 out of 10,000 young people in the population, which is higher than the previous three years (Australian Institute of Health & Welfare, 2022). Among the 2,182 youth under supervision on an average day, 1,649 were aged 14-17. Notably, almost 8 in 10 Aboriginal youth under supervision were males, which comprised 78.5% of the total population (Australian Institute of Health & Welfare, 2022). Between 2021-2022, Aboriginal youth were 17 times more likely than non-Aboriginal youth to be under community-based supervision per day (93.9 compared to 5.4 out of 10,000 young people) and 24 times more likely to be in detention (28.3 compared to 1.2 out of 10,000 young people) (Australian Institute of Health & Welfare, 2022).

An interrelated and dynamic set of factors contribute to the overincarceration of Indigenous youth in Australia and these factors can be traced back to colonization (Cooper et al., 2016; Dellar et al., 2022). Although highly diverse in dialect, social structures, and cultural practices, before colonization, Indigenous communities across Australia were self-governing groups with well-established systems of law and order (Pfeifer et al., 2018). As part of the colonization process, Westernized justice systems were adopted, leaving Indigenous Australians in the difficult position of being expected to abide by the newly imported foreign laws despite having a limited understanding of their parameters (Brown, 2019; Gillfeather, 2019).

As is the case with Australia and most other countries colonized by Europeans, Indigenous peoples in Canada had a rich and varied history dating back well before the arrival

of European settlers (Heo, 2019; Nichols, 2018). Although practices varied among Indigenous peoples, their legal practices and customs focused on communal values and peoples relationships with their world (Nichols, 2018). Commentators in New Zealand also recognize the effect of colonization on Indigenous people and the relationship this has to a variety of challenges concerning youth crime (Paine et al., 2022; Stanley & Froidville, 2020).

The New Zealand System

The legal and criminal justice system in New Zealand has been heavily influenced by settler-colonial institutions and the cultural values of Pakeha (non-Māori) settlers, resulting in the exclusion and denigration of Māori understandings, values, and concepts (Stanley & Froideville, 2020). Assimilation policies have weakened Māori social control, which has marginalized collective community responses to social harm and crime (Toki, 2018). As a result, Māori youth have been historically distanced from their concepts of behavior, as well as the authority that comes with them (Webb et al., 2023). This is due to the deliberate undermining of Māori social and cultural structures, which emphasize collective norms (Paine et al., 2022; Webb, 2022).

One explanation for Māori overrepresentation is that there are differential patterns of offending and such patterns stem from the ongoing effects of structural disadvantage (Pfeifer et al., 2018; Toki, 2018). Although the effects of colonization continue to affect Indigenous experiences in both the adult and youth justice systems, the issue is far more pronounced for Māori adults, with historical decreases seen in youth incarceration rates (Cook, 2023). New Zealand's primary piece of youth justice legislation, The Childrens, Young Persons and their Families Act (CYPFA), enacted in 1989 and recently renamed to the Oranga Tamiriki Act (OTA) in 2017, outlines principles of diversion, decarceration, victims' rights and the empowerment of whānau (families) (Deckert & Sarre, 2017; Doolan, 2017).

In 2010, the government passed an amendment to the OTA, which introduced a further principle that any interventions instituted in response to a young person's offending must address its underlying causes. The OTA legislates a robust and evidence-based response to

youth offending. Initiatives such as the Policing Excellence Initiative and subsequent Prevention First Model shifted police towards a more proactive and prevention-focused approach to youth offending (Webb et al., 2023). In 2010, the New Zealand Police Service (NZPS) implemented various community-based initiatives as part of its Policing Excellence Initiative. NZPS upholds the principle of addressing young offenders who require more than a verbal warning through a specialized division (Youth Aid Division) (Webb et al., 2023). New Zealand remains the only country in the world to have a specialized aid division of the police force to deal with young offenders (Toki, 2018).

This division, comprised of a team of experts (Youth Aid Officers), possesses the authority to handle cases informally by implementing alternative resolutions, such as meeting with the offender's family, attending a drug and alcohol program, or enforcing a curfew. Iwi (tribal) justice panels are some initiatives that provide viable alternatives to formal court proceedings. These panels operate in Gisborne, Auckland, Christchurch and Lower Hutt (Gordon, 2019) with the objective to address the root causes of offending (Keddell et al., 2019). The NZPS views these community-based justice panels as a proactive approach to crime prevention and an opportunity to strengthen relationships between the police and the communities they serve (Gordon, 2019; Stanley & Froideville, 2020).

This section summarized the current state of the overincarceration paradigm as evident in Canada, Australia and New Zealand. The prevailing dichotomies inextricably prevalent in all three countries in the form of colonizing policies and practices that have overridden the historical models of justice followed by Indigenous communities were explored. Although Western youth justice systems internationally accredit various narratives, these narratives overwhelmingly favour punitive models that embody discipline and control without regard for the contextual vulnerabilities plaguing Indigenous youth as a result of neocolonial processes (Cunneen et al., 2016). Although laws are embedded within the jurisdictional landscapes of the Canadian and Australian systems, they are limited in their scope and connection to Indigenous

needs. Although the influence of settler-colonial institutions was paralleled in all three countries, the OTA comprehensively reformed the New Zealand response to offending behaviour of youth in a culturally responsive manner that was not considered in Canada and Australia (Webb et al., 2023). In highlighting this, the following section will provide an overview of the culturally responsive interventions that are in place in Canada and Australia.

Review of the Culturally Responsive Interventions

Canada's Call to Action 38

As per the Truth and Reconciliation Commission (TRC) Report (2015), the overrepresentation of Indigenous youth in Canada's criminal justice system has reached crisis levels (Department of Justice Canada, 2021; MacDonald, 2020). In acknowledging this, the Government of Canada has prioritized the restoration of its relationship with Indigenous peoples and is making efforts to advance reconciliation with Indigenous communities based on recognition of "rights, respect, and partnership" (Department of Justice Canada, 2021, p. 4). The response begins with addressing Call to Action 38 of the TRC's report, which urges the federal, provincial, territorial, and Aboriginal governments to take concrete steps towards reducing the overrepresentation of Aboriginal youth in custody by the end of 2025 (MacDonald, 2020).

In March 2019, three roundtable discussions (sharing circles) were held to promote open discussions on program development (Department of Justice Canada, 2021). Each focused on a specific Indigenous group, the first roundtable (held on March 19th) was centered around First Nations, followed by a Métis discussion on March 20th and an Inuit circle on March 21st (Department of Justice Canada, 2021). The approach was distinction-based, recognizing that pan-Indigenous solutions cannot address each culture's unique needs and challenges (MacDonald, 2020). The discussions were centered around topics related to restorative justice, Fetal Alcohol Spectrum Disorder (FASD), Gladue Reports, and culturally responsive programming (MacDonald, 2020).

In speaking to the centrality of culture in establishing identity and inner resilience, some of the participants highlighted the issue of inadequate culturally appropriate support for Indigenous youth as a significant challenge in preventing recidivism (Department of Justice Canada, 2021). Other participants delved into the unintended consequences and challenges of Gladue reports, which have the potential to label youth and exacerbate their difficulties leading to vulnerability and trauma (Department of Justice Canada, 2021). Furthermore, the importance of a distinctions-based approach to restorative justice was emphasized, one that acknowledges and integrates the unique cultures and daily realities of First Nations, Métis, and Inuit communities (MacDonald, 2020). Overall, there was a shared narrative for longer-term assistance and sufficient culturally informed services (Department of Justice Canada, 2021).

In order to address the unique needs of Indigenous youth who are involved in the justice system, Justice Canada provides funding to various non-profit and Indigenous organizations, as well as provincial and territorial governments (Ferguson et al., 2021). Justice Canada will provide approximately \$1 million over three years (2023-2026) to the Community Youth Reintegration Program (CYRP) (Department of Justice Canada, 2023). For the communities under the Saskatoon Tribal Council (STC), this program offers intensive mentorship to youth, culturally responsive programming and guidance from knowledge keepers (elders). The program offers a holistic inter-agency approach, with the aim to connect youth with appropriate resources and create supportive connections in the community (Jewell & Mosby, 2023).

Approximately \$11 million in funding for Budget 2021 was set aside until March 2024 to facilitate Indigenous-led community engagement with select Indigenous groups and the government (Department of Justice Canada, 2023). There is also a provision for \$216.4 million over the next 5 years, commencing from 2022 and an ongoing \$43.3 million for the Youth Justice Services Funding Program (YJSFP) (Jewell & Mosby, 2023). This funding aims to increase funding for provinces/territories to support diversion programming and help curb the

overrepresentation of Indigenous peoples and racial minorities specifically in the youth justice system (Department of Justice Canada, 2023).

As of April 2021, a total of \$10.5 million in federal funding had been approved through the Youth Justice Fund to support multi-year projects focusing on Indigenous youth (Department of Justice Canada, 2023). In March 2021, the Attorney General and Minister of Justice announced the Government of Canada's support to Ryerson University for its National Indigenous Court Workers: Indigenous Youth-Centered Justice Project (IYCJP). The goal of this project is to improve outcomes for Indigenous youth who are involved in both the child welfare and youth justice system. A total of nearly \$2.5 million over 5 years is also being provided in support of this project (Department of Justice Canada, 2023). The IYCJP will conduct individual casework with Indigenous youth from both the criminal justice and child welfare systems, with the goal of reducing overrepresentation and recidivism (Jewell & Mosby, 2023).

On March 17, 2021, Justice Canada announced a total of \$587,000 over four years to support the Empower Project (Wong, 2021). This program supports vulnerable Indigenous young women who are justice-involved and diagnosed with Fetal Alcohol Spectrum Disorder (FASD) (Wong, 2021). Programming will include culturally informed substance abuse counseling, mental health support, as well as skill-building, social and recreational activities (Wong, 2021). Additionally, to improve Indigenous Family Courtwork services, Justice Canada announced \$1.2 million in funding for regions where these services currently exist, including Alberta, Saskatchewan, Quebec, Ontario, and the Northwest Territories (Department of Justice Canada, 2023). The 2023 Fall Economic Statement proposed investments of \$14 million over a five year period for the ongoing development of Gladue reports, with an emphasis on availability and delivery models in order to implement Gladue principles throughout the criminal justice system (Department of Justice Canada, 2023).

Although there seems to be a series of culturally responsive interventions underway, funded and supported by the federal government. It is evident (just like the TRC recognized)

that there is a magnitude of ways to address the issue and many of these efforts are tied to other Calls to Action which will all contribute to the achievement of Call to Action 38 (MacDonald, 2020). The Department of Justice (2021) reports that Canada is actively collaborating with Indigenous governments, organizations and communities to develop an Indigenous Justice Strategy (IJS). A first round of 26 engagement sessions have been conducted between November 2022 and March 2023, with over 700 Indigenous participants from diverse backgrounds (Department of Justice Canada, 2023).

Despite the mass funding supporting select initiatives, the scope of the government's response has been limited and leisurely (Passafiume, 2023). According to the Yellowhead Institute, which is the only Indigenous-led policy think tank in Canada, “the federal government has more than proven an unwilling partner in meaningful reconciliation” (Jewell & Mosby, 2023, p. 6). With zero Calls to Action completed in 2023 and 81 Calls remaining unfulfilled since the TRC's final report in 2015, Yellowhead Institute has decided to stop publishing its annual report due to lack of action from the government (Passafiume, 2023). Although the federal government seems to be treading in the right direction by including Indigenous voices in program design. There is a long ways to go to address the inherent issues that lie beneath the surface and focus on aspects related to health, education and employment opportunity, which are issues that the Australian government could also work more comprehensively on. The following section will seek to explore this perspective, specifically focusing on the Closing the Gap framework as a parallel response to Canada's current approach to the overincarceration paradigm.

Australia's Closing the Gap Outcome 11

In 2020, all Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations signed the National Agreement on Closing the Gap (NACG). This marked the first time a non-government party signed as a partner in a national agreement (Productivity Commission, 2024). This landmark agreement called for a structural shift in the way governments collaborate with Aboriginal groups to achieve better outcomes (Productivity

Commission, 2024). NACG was put into effect with specific targets for youth justice set by the Australian Government (NIAA, 2024). Target 11 is especially noteworthy and will be our focus as it parallels Call to Action 38. Target 11 outlines a commitment to decreasing the rates of Aboriginal youths in detention by a minimum of 30% by 2031 (Maxwell, 2024). The Indigenous Advancement Strategy (IAS) is the mechanism through which the Australian Government funds and delivers programs for Indigenous Australians (NIAA, 2024). In the 2021-22 Budget, the Australian Government allocated \$5.7 billion to the IAS for grant funding processes and administered procurement activities, spanning up to 2024-25 (Australian Government, 2024).

Through the IAS, The Commonwealth has provided funding for youth diversion and support activities, totaling approximately \$12 million in 2022-2023 (NIAA, 2024). These efforts are designed to complement those being made by states and territories to enhance justice and community safety outcomes (Australian Government, 2024). The activities are specifically geared towards Indigenous youth aged 10-24 who are either in contact with or at risk of encountering the justice system (Butler, 2024; Lowitja Institute, 2024). The goal is to promote positive behavior through various means, such as diversionary activities and intensive case management (NIAA, 2024). The Commonwealth plays a pivotal role in collaborating with communities and state governments to facilitate positive change and aid Indigenous community-controlled organizations in executing effective solutions (Lowitja Institute, 2024).

The IAS is committed to supporting diversionary and early intervention programs, while the Justice Policy Partnership (JPP) represents a collective effort involving representatives from the Coalition of the Peaks and all Australian governments (Butler, 2024; Lowitja Institute, 2024). Their aim is to take a cohesive approach to Indigenous justice policy, with a view to expediting progress towards Outcomes 10 and 11, which are reported together by the Productivity Commission (NIAA, 2024). Building on the JPP Work Plan from 2021-22, the JPP continues to strengthen strategic partnerships and holistically consider Indigenous policies and their potential impacts (NIAA, 2024). This includes a focus on understanding the complex socio-economic

drivers that increase the risk of Indigenous people's contact with the criminal justice system (Australian Government, 2024).

The Commonwealth's First Nations justice commitment, announced in the 2022-23 federal budget, represents a significant step towards Closing the Gap and improving the lives of Indigenous people (NIAA, 2024). This includes \$81.5 million over four years in new and ongoing funding for community-led justice reinvestment projects, as well as a national independent justice reinvestment unit to assist communities in developing and evaluating justice reinvestment initiatives (NIAA, 2024). The aim is to ensure that lessons learned are collectively shared nationwide (Australian Government, 2024).

The implementation of justice reinvestment has proven to be an effective approach to addressing the root causes of incarceration within Indigenous communities (Australian Government, 2024). By working collaboratively with all levels of government and the wider community, Indigenous communities have been able to curb crime and reduce interactions with the criminal justice system (NIAA, 2024). In 2023, the Commonwealth provided an additional \$17.5 million to strengthen the leadership potential of Indigenous community-controlled organizations and enhance access to culturally sensitive legal and non-legal assistance for First Nations peoples (NIAA, 2024). This funding will enable Indigenous communities to improve their capability to tackle incarceration rates within their locality and achieve better outcomes for their communities (Lowitja Institute, 2024).

The 2022-23 State Budget has provided an allocation of \$40.4 million towards community-based programs that aim to support vulnerable youth and reduce their involvement with the justice system (NIAA, 2024). Western Australia currently has the highest rate of youth detention in the country, which has made it a top priority for the government to work collaboratively with Aboriginal youth, their families and communities, and non-government organizations to improve outcomes (Western Australian Government, 2024). To this end, the Kimberley Juvenile Justice Strategy (KJJS) has been developed in the Kimberley region to

provide location-specific initiatives that steer youth away from the formal justice system, and towards more positive outcomes (Western Australian Government, 2024).

The Kimberley region has undertaken several initiatives to improve youth justice outcomes. These efforts comprise a wide array of interventions, including night patrols, structured activities, skills programs, cultural camps, and after-school activities (Western Australian Government, 2024). The Joint Policy Program (JPP) has allocated \$11.1 million towards the Target 120 program, which offers early intervention support customized to the specific needs of at-risk youth and their families, focusing on factors that contribute to offending and antisocial behavior (Western Australian Government, 2024). Furthermore, the JPP has earmarked \$15 million towards a residential facility for young offenders in Kimberley, as well as other initiatives to provide safe residential accommodations (NIAA, 2024).

In Australia, the current policy for youth justice prioritizes early intervention and diversion from the criminal justice system, acknowledging the unique care and protection that young people require based on their age (Cunneen et al., 2021; Dale et al., 2023). Nevertheless, youth justice systems are managed by individual state and territory governments, resulting in significant variation in diversionary practices, particularly in Indigenous communities (Cunneen et al., 2021; Garner et al., 2023). The Commonwealth acknowledges that states and territories have the authority to address disparities in their respective systems and policies that disproportionately impact Indigenous peoples and their communities (NIAA, 2024).

The latest Closing the Gap annual data, released on July 14, 2023, presents a mixed picture of progress towards achieving the targets set by the Closing the Gap commission (Australian Government, 2024; Maxwell, 2024). While there have been some gains in reducing the rate of incarceration and improving early childhood education enrollment rates among Indigenous youth, there are still areas of concern (NIAA, 2024). According to the 2023 Closing the Gap Annual Data Compilation Report (ADCR), only five of the 19 targets are on track

(Maxwell, 2024). While target 11 is one of the five on track (with no evidence to back the claim), target 10 (which is inherently tied to 11) is worsening (NIAA, 2024).

According to the Productivity Commission, in a report published on February 7, 2024, the federal governments overall progress towards its targets has been slow and uncoordinated, with disregard for Indigenous needs (Butler, 2024). It is clear that there is much work to be done to close the gap and achieve all 19 targets by 2031 (Maxwell, 2024). Nonetheless, the Australian government is not without guidance, the Productivity Commission has provided a list of recommendations for progress to recommence and many of these will be explored later in this paper. First, however, we must explore a different perspective and identify what seems to be working for New Zealand in their approach to Indigenous youth overrepresentation.

Recommendations for a Path Forward

What is Working for New Zealand

The youth justice system in New Zealand has prioritized restorative justice through the implementation of Family Group Conference (FGC) and heavily emphasizes diversion for young offenders (Pfeifer et al., 2018). The approach is founded on the principles of restorative justice and diversion, which were incorporated into the CYPFA in 1989 (Webb, 2022). These provisions had been developed before ideas about restorative jurisprudence had been widely disseminated. The New Zealand system, and in particular FGCs, have become restorative in practice in an evolutionary way, rather than as a result of any theoretical or legislative prescription to do so (Toki, 2018). The Act promotes a hybrid justice-welfare approach for youth offenders, where the community plays a central role in addressing offending behavior (Pfeifer et al., 2018). As per Section 208 of the Act, criminal proceedings are considered only as a last resort to discourage the police's over-reliance on arrest powers (Webb, 2022).

In the context of restorative justice, scholars have argued that conflict resolution should be left to those directly involved or affected by the crime (Gordon, 2019; Hamley et al., 2023;

Tauri, 2022). However, the traditional justice system often relies on legal professionals to speak on behalf of victims, offenders, and their communities, often marginalizing the voices of those most impacted (Tauri, 2022; Toki, 2018). To address these issues and promote a more empowering process, restorative justice, including restorative conferencing, has been developed (Paine et al., 2022; Toki, 2018). Restoration necessitates bringing together all stakeholders affected by a particular offense to collectively determine how to address the aftermath of the crime and its future implications (Gordon, 2019). Although restorative justice was only introduced to New Zealand in 1993, its underlying principles have been present since the implementation of Family Group Conferencing (FGC) under the CYPFA in 1989 (Nordstrom & Stanfield, 2021).

The FGC process in New Zealand draws from the Māori tradition of collaborative decision-making to address conflicts and incorporates Māori traditions and protocols (Doolan, 2017). Approximately 75% of youth offending doesn't result in a formal charge. According to Section 208(a) of the OTA, measures should empower family groups to identify and implement their own solutions for dealing with youth offenses, with sanctions being the least restrictive and instead promoting the growth of the young person involved (Gordon, 2019). Despite being replicated worldwide, the FGC remains unique to New Zealand's youth court as the primary and mandatory decision-making process. Successful execution of the FGC plan results in the withdrawal of proceedings, with the young person avoiding criminal charges and a criminal record (Deckert & Sarre, 2017). However, if the plan fails to materialize, another FGC is convened, or the matter is referred to the youth court for further review (Grey et al., 2023).

The OTA further emphasizes parental responsibility and accountability. A youth court judge can summon a parent to the court, and failure to appear may result in a punitive sanction (Gordon, 2019). The court can also impose a parenting education order requiring the parent to participate in a specialized program that promotes positive family relationships (Pfeifer et al., 2018). There are additional therapeutic interventions available to foster better communication

and familial relationships. Functional Family Therapy is meant to change communication and interaction patterns by supplying parents with proactive parenting tools (Toki, 2018). Multi systemic therapy identifies the underlying causes of a young person's offending and works with the whole family to address the specific risk factors. Both interventions have resulted in positive behavioral changes in the families of many young offenders (Stanley & Froideville, 2020).

In 2008, the Ngā Kōti Rangatahi initiative was established in response to the recognition that the youth justice system could do more to meet the specific needs of young Māori (Hamley et al., 2023). The principle behind these courts is the notion that criminal conduct often stems from a loss of identity and self-esteem. As such, the main objective is to assist the young person in regaining these qualities (Paine et al., 2022). The proceedings of the Rangatahi courts and the Pasifika courts are held on the Marae, where it is imperative to observe and respect customary practices. In addition to promoting the use of Te Reo (Māori language), the Rangatahi courts also aid young Māori in reconnecting with other aspects of their cultural heritage (Doolan, 2017). According to a recent court evaluation, it was found that young Māori who attended Ngā Kōti Rangatahi felt valued, understood the court proceedings, perceived the monitoring process to be just, and enjoyed positive relationships with the youth justice experts (Gordon, 2019). However, it is important to note that while this court system, similar to the Koori court in Australia, has many strengths, it does not address the underlying causes of crime, such as poverty and systemic biases (Webb et al., 2023).

.According to reviews of successful interventions for Indigenous youth offending, there are several key components that should be included (Gordon, 2019; Webb, 2022). These components include a whānau family approach, recognition of identity, cultural knowledge, connectivity, addressing educational/vocational needs, ensuring social and economic well-being, and employing individuals (preferably Māori) who have a strong sense of authority that young people can relate to (Deckert & Sarre, 2017). It has been suggested that interventions that focus

on the important community and familial aspects of Indigenous youth, rather than punitive measures, are more effective (Grey et al., 2023).

New Zealand's system is quite unique globally, in that, the legal framework prioritizes families when it comes to decision making and aims to empower families and ensure their full participation (Polglase & Lambie, 2023). The OTA's commitment to handling young offenders within the context of their families is one of the highest standards set by international instruments and conventions (Webb, 2022). The legislation upholds nearly all the principles of the Beijing Rules and the United Nations Convention on the Rights of the Child (UNCROC) (Polglase & Lambie, 2023). The Beijing Rules' emphasis on family involvement can be observed at every stage of the youth justice process in New Zealand, from interactions with police youth aid at the point of charge or alternative action, to the decision to impose a formal youth court order (Pfeifer et al., 2018). Although UNCROC was not considered during the drafting of the legislation, the OTA incorporates nearly all of the convention's protective rights.

The youth justice system of New Zealand has gained significant recognition from the global criminal justice community for its innovative approach (Paine et al., 2022; Stanley & Froidville, 2020; Toki, 2018). The system places substantial emphasis on diversion, decarceration, victims' rights and family participation, which have proven to be instrumental in reducing the criminogenic risks for young individuals entering the justice system. The effectiveness of these measures is a testament to the system's adeptness in tackling challenges related to youth justice, that are not seen in other parts of the world (Gordon, 2019). This section aimed to explore the various principles and practices unique to New Zealand's approach to youth justice, which will be useful in our discussion on a path forward for Canada and Australia later on. However, the various recommendations and viability of select measures offered to the Canadian government to prevent youth overincarceration are explored in the following section.

What Can Canada do to Improve

It is imperative to consider that the Canadian government's responses to crime are predominantly systemic rather than restorative in nature (Tauri, 2022). The focus is on adjusting the criminal justice system rather than addressing the root causes of youth crime by involving victims, engaging offenders, and consulting community leaders (Barker et al., 2015; Lockwood et al., 2018). This critique of the government's response was especially emphasized by Douglas Sinclair (of Indigenous Watchdog) in an interview for the Yellowhead Institute (Jewell & Mosby, 2022). Sinclair stressed the year after year narratives around funding, in that, the government touts the many millions going into program design and implementation with a lack of transparency in provincial funding, program effectiveness and overall results (Jewell & Mosby, 2022). According to Canada's correctional investigator Ivan Zinger, in a press conference highlighting the travesty that is Indigenous overincarceration, "organizational paternalism" coupled with the "incapacity for self-reflection" are inherently evident in the correctional system resulting in an unconscionably Indigenous prison population (Forester, 2023, p. 1).

Zinger also stressed that Correctional Services Canada (CSC) is "playing a game of recognition politics, where it has learned to talk the talk of reconciliation to increase its resource base, quell the concerns of detractors and advocates, and stall for yet more time" (Forester, 2023, p. 1). In his 2022-2023 Annual Report, Zinger lists key findings for reform upon engaging with various Indigenous organizations, leaders and stakeholders. A general consensus agreed that interventions like the Pathways Initiatives have no meaningful impact because they serve very few people, the contributions of elders (knowledge keepers) are undervalued and the pan-Indigenous approach to corrections erases relevant cultural differences between First Nations, Metis and Inuit populations (Forester, 2023).

Although these findings apply to Indigenous peoples more generally, they are inextricably linked to concerns expressed in relation to youth incarceration and parallel the concerns expressed elsewhere. For instance, a consensus of youth engaged in the 2019

Indigenous Youth Roundtable Discussions (IYRD) expressed concerns related to service delivery and cultural programming. Specifically highlighting that the pan-Indigenous cultural programming provided at various stages of the criminal justice system did not cater to their cultural requirements (Department of Justice Canada, 2021). Several Inuit participants emphasized the necessity for community-based youth-centered activities to deter young people from engaging in high-risk conduct (Department of Justice Canada, 2021). It was identified that the primary reasons surrounding minor offenses committed by Inuit youth in their communities were correlated with the absence of appropriate activities and the resulting boredom from not having access to community-based sports which were perceived as critical to fostering community cohesion (Department of Justice Canada, 2021).

Indigenous youth in Canada face higher rates of preventable chronic disease compared to their non-Indigenous counterparts, making effective health promotion programs critical (Ferguson et al., 2021). To ensure these programs meet the needs of Indigenous youth, it is essential to center their voices and experiences (Lopresti et al., 2020). Given that children and youth spend a significant amount of their day at school, school-based health promotion programs offer a promising strategy to improve health and wellness (Ferguson et al., 2021). A growing body of evidence supports Indigenous peer-led programs as beneficial for Indigenous youth. For instance, a systematic review by Vujcich et al. (2018) found that peer-led health promotion programming in Canada, Australia, New Zealand and the United States improved health-related knowledge and behaviors among Indigenous youth. In addition, the programs led to increased use of health services, decreased alcohol use, increased awareness of sexual health issues and enhanced self-esteem (Vujcich et al., 2018).

Many healthy living interventions are implemented annually for youth, but few are tailored to the specific needs of Indigenous youth (Vujcich et al., 2018). Out of the interventions that have reached multiple Indigenous communities in Canada, only five have made an impact, and one of them is the Indigenous Youth Mentorship Program (IYMP) (Lopresti et al., 2020).

This program is community-led and based on Indigenous values with a focus on promoting healthy lifestyles among children and youth (Ferguson et al., 2021). It involves multi-age mentoring and incorporates physical activity, healthy eating, and cultural teachings (Lopresti et al., 2020). Unlike other Indigenous health promotion programs, the IYMP uniquely integrates Indigenous values to promote healthy lifestyles among children and youth (Ferguson et al., 2021). The program's non-hierarchical, communal mentoring approach ensures that learning is not just peer-led but is multi-directional (Vujcich et al., 2018).

The IYMP has been successfully implemented in over 20 communities across Canada, with each program tailored specifically to the needs of its community (Ferguson et al., 2021). By embracing and incorporating the unique knowledge and experiences of each community, the IYMP takes a strengths-focused approach. Research has demonstrated that the program has a positive impact on health outcomes, including reducing body mass index and increasing dietary self-efficacy (Ferguson et al., 2021; Vujcich et al., 2018). In a study conducted in two rural community schools in Alberta, traditional cultural activities and teachings were integrated into the program design (Lopresti et al., 2020). Activities include the Seven Grandfather Teachings, language revitalization (Stoney or Cree), ceremonies (prayer or smudging) and Medicine Wheel (Lopresti et al., 2020). The study concluded that connecting youth with cultural traditions and revitalizing language were important initiatives for promoting wellness and strengthening youth resilience (Lopresti et al., 2020). While more research is needed to understand Indigenous youth-focused health promotion programs in Canada, the IYMP serves as a model for related programs that seek to adopt a communal-led, multi-directional, and distinctions-based approach that is highly favored amongst youth (Vujcich et al., 2018).

In order to achieve true efficacy, cultural programming must be customized to acknowledge and address the unique distinctions of each community (Department of Justice Canada, 2021; Mackenzie, 2020). Unfortunately, the lack of support for Indigenous peoples extends beyond cultural matters (Mackenzie, 2020). First Nations, Métis, and Inuit communities

face dynamic challenges related to their history and geography, which directly impact their social determinants of health (Cesaroni et al., 2019). During roundtable discussions, participants emphasized the critical need to address these determinants (Department of Justice Canada, 2021). Doing so can prevent their initial interaction with the justice system and promote successful rehabilitation to respond to these challenges comprehensively and promote social equity (Department of Justice Canada, 2021).

It is imperative to enhance collaboration and information exchange among social service providers, criminal justice personnel, community leaders, and elders to strengthen support for Indigenous youth throughout all stages (Department of Justice Canada, 2021). Notably, despite the presence of mental health services, their efficacy is impeded by a lack of cultural sensitivity and high staff turnover (Department of Justice Canada, 2021; Prince et al., 2021). To overcome these challenges, it is recommended to foster better communication between service workers and policymakers at every level by educating them on Indigenous culture and contemporary social realities (Department of Justice Canada, 2021; Prince et al., 2021).

In recent years, the adoption of a public health approach towards addressing youth involvement in criminal activities has gained considerable attention (Cooper et al., 2016; O'Brien et al., 2023). This approach aims to prevent offending and victimization by incorporating strategies into a broader population-level framework that targets early risk factors for delinquency and violent behavior, such as housing and health (Prince et al., 2021). By prioritizing the intricate causal system underlying youth offending, this approach recognizes that social structures, access to criminogenic commodities, and exposure to situations that encourage offending can play a role (Prince et al., 2021). This approach is in contrast to the purely criminal justice-centered perspective of youth offending that concentrates solely on individual motivations and intentions (O'Brien et al., 2023).

Clearly, the issues at hand are complex and multifaceted, requiring significant investment of time and resources to implement effective solutions (Tauri, 2022). However, the

Canadian government has a wealth of recommendations and potential solutions at its disposal. Many of these recommendations coming from the TRC Final Report in 2015 which, according to Ivan Zinger, “remain relevant but mostly unfulfilled” (Forester, 2023, p. 1). The recommendations include; developing culturally appropriate parenting programs for Indigenous families, creating education curricula that are respectful of Indigenous cultures, providing cultural training to judges and lawyers and establishing traditional healing centers that are culturally sensitive to the physical and mental health concerns of Indigenous peoples (O'Brien et al., 2023). By taking decisive action and implementing many of the solutions proposed in this report, the Canadian government can make considerable progress in resolving the social issues that have long plagued Indigenous communities (Sittner & Estes, 2023).

Moreover, the Commission calls on the government to collaborate with Indigenous communities to develop community-based sanctions that address the underlying causes of offending, proactively prevent crime, and reintegrate offenders post-incarceration (O'Brien et al., 2023). These measures are necessary to address the specific social needs of Indigenous peoples with the input of those who are most aware of them (Lockwood et al., 2018). It is worth mentioning that the Canadian government has already initiated programs to address the social causes of crime within inner-city neighborhoods. Implementing the recommendations of the Truth and Reconciliation Commission will require a concerted effort from the government, Indigenous communities, and the judicial system itself (O'Brien et al., 2023). Adopting these measures will ensure that Indigenous peoples receive fair treatment within the criminal justice system while also addressing the root causes of crime.

It is recommended that future endeavors prioritize the development of specialized early intervention programs that prioritize the empowerment and expressed needs of Aboriginal families (Cesaroni et al., 2019). Additionally, expanding the use of restorative justice programs that align with traditional Indigenous values is key. Research has shown that community-based alternative measures, designed and operated by self-governing Aboriginal nations, can mitigate

the postcolonial framework within which the current criminal justice system exists (O'Brien et al., 2023). These alternative measures are a fundamental tenet of reform. Indigenous communities have identified the need for upstream interventions to help at-risk Indigenous youth connect with their communities, traditions and promote positive self-worth (Prince et al., 2021). For instance, a study conducted by Barker et al. (2015) calls for the implementation of culturally-tailored addiction prevention programs that target youth, in addition to programs that promote healthy family dynamics and conflict resolution.

It has been recommended that approaches to addressing issues like crime should be comprehensive and should take into account the intricate cultural dynamics and rich historical background of Indigenous communities (Prince et al., 2021). Unfortunately, many individuals in the media and the general public tend to view youth delinquency solely through the lens of criminal justice, disregarding the impact of contextual factors like trauma, social and economic disparities, and other environmental influences on the development of antisocial behavior. As a consequence, media and political reactions to youth delinquency tend to have a primarily punitive nature (Gordon et al., 2021; Pratt, 2017).

In order to address the issue of overrepresentation, it is essential to bring about a fundamental shift in approach. Merely altering sentencing schemes or employing diversionary measures that lack cultural responsiveness are unlikely to remedy the underlying issues of marginalization and discrimination that Indigenous youth face (Barker et al., 2015). By utilizing successful programs as models, the government can increasingly collaborate with Indigenous leaders and communities to address persistent social issues on reserves and to effectively resolve overrepresentation. The Canadian government should ultimately invest in evidence-based interventions, focused on education initiatives, because as Murray Sinclair rightfully emphasized, education is what got us into this mess and education must be the driving force that will help get us out. Therefore, the Canadian government must display a willingness to

extend beyond the confines of the criminal justice system and tackle the multilateral issues that have plagued Indigenous communities for decades (Tauri, 2022).

How Australia Can Move in the Right Direction

The Coalition of Aboriginal and Torres Strait Islander Peak Organisations and the Australian governments have collaboratively commissioned the Productivity Commission to conduct an extensive review of progress and provide recommendations to ensure the objectives of the NACG are met (Productivity Commission, 2024). The Commission has highlighted that adhering to business-as-usual practices will not bring about significant change (Butler, 2024). Although minor adjustments have been made nationwide to comply with the NACG, genuine progress necessitates a profound analysis of systems, departments, and public servants (Butler, 2024). It is crucial for government decision-makers to acknowledge their limited comprehension of the needs of Aboriginal people. Unfortunately, key government systems, such as policy-making processes, funding, and contracting rules, have not changed substantially (Productivity Commission, 2024). This can be attributed to entrenched government cultures, attitudes, and risk aversion that have not evolved to share power. Furthermore, insufficient cultural capability and a lack of cultural safety persist (Milroy & Bandler, 2021).

The lack of a cohesive strategy for system-wide change has impeded progress, as there is no clear roadmap for how the multitude of small actions outlined in implementation plans will lead to significant transformation (Butler, 2024). Ironically, there are still cases of governments making decisions that contradict their commitments in the agreement, such as the alterations to bail laws in Queensland that will result in more Aboriginal youth being incarcerated for longer periods (Productivity Commission, 2024). To achieve tangible progress, the government must act on the four recommendations provided by the Productivity Commission and priority reforms already in place. The first recommendation underscores the need for governments to share power and prioritize Aboriginal rights to control decisions that impact their lives (Butler, 2024).

The success of community transformational processes hinges on the transfer of power from government to the community, which must occur through culturally sensitive/safe decision-making processes (Butcher et al., 2022). In Australia, cultural safety is a growing topic in government sectors and originates from Maori nursing practices in New Zealand as an Indigenous knowledge construct (Butcher et al., 2020; Flemington et al., 2021). Its purpose is to address power imbalances in relationships, promote understanding of the rights of others and acknowledge the legitimacy of differences which provides communities greater control when collaborating with non-Indigenous service providers (Flemington et al., 2021). Cultural safety's influence is expanding and has now gone beyond nursing practices in New Zealand, with acceptance in other research fields such as immigration (Butcher et al., 2020).

The second recommendation is related to recognizing Indigenous Data Sovereignty (IDS). The NACG has garnered immense support from Aboriginal organizations to include IDS (Productivity Commission, 2024). Accepting and implementing IDS in the agreement would lend itself to a mandate for action, enabling more effective partnerships and disrupting negative narratives surrounding data interpretation (Butler, 2024). This would ultimately foster increased trust in data collection and better information for policy design and delivery (Productivity Commission, 2024). The third recommendation relates to a fundamental overhaul of government systems and culture for central agencies to update funding rules to incorporate accountability for funders explicitly (Productivity Commission, 2024). It is vital for Aboriginal Community Controlled Organizations (ACCOs) to be involved in negotiations from the outset, as their expertise and knowledge are indispensable (Productivity Commission, 2024).

One potential national accountability mechanism for Closing the Gap goals and monitoring processes is to incorporate statistics on Indigenous incarceration and recidivism rates (Battams et al., 2021). Since these figures are linked to other monitored objectives, they could provide a meaningful way to track progress. Collaboration between the justice sector and other industries could facilitate the allocation of necessary resources, such as public housing

and justice reinvestment strategies (Battams et al., 2021). The heavily favored justice reinvestment approach redirects resources used for prisons toward dysfunctional communities. Justice reinvestment is simply a proactive approach to alleviate social disadvantages, like the lack of education and employment. According to Bratanova and Robinson (2017), justice reinvestment would require a change of approach from a reactive to a proactive testament. For instance, public spending on prisons has led to less spending on other areas within the justice system (Battams et al., 2021). While spending on policing is higher than spending on prisons, prison spending is increasing faster than spending on policing (Battams et al., 2021). Independent evaluations have concluded that justice reinvestment initiatives build local capacity and empower communities to develop local solutions to local issues. Education has been brought to the forefront as a vehicle for social change in reducing poverty and crime while increasing future employment and economic status (Warner et al., 2022).

The fourth recommendation by the Productivity Commission highlights the need for stronger accountability in monitoring and reporting progress toward driving behavior change (Butler, 2024). Although the NACG does not provide a comprehensive list of measures required to address the entrenched inequality experienced by Aboriginal people, such measures can be found in other intergovernmental agreements, including those relating to schools, health, skills, and housing (Milroy & Bandler, 2021). As these agreements are revised, governments must ensure they reflect their commitments (Butler, 2024). It is recommended that every government include a statement in its annual report detailing the substantive activities it undertook to implement the recommendations (Productivity Commission, 2024). Moreover, governments should publish stocktakes, partnership agreements, transformation strategies, and other relevant documents (Productivity Commission, 2024). The aim is to enhance socio-economic outcomes by prioritizing Aboriginal knowledge, reinforcing leadership in program design and creating culturally safe and responsive programs (Productivity Commission, 2024).

In 2019, a cohort of 65 Indigenous Australian youth convened for the Imagination Declaration youth forum (Shay et al., 2019). The forum's principal aim was to encourage the Prime Minister and education ministers to incorporate the views of young people in shaping future policies (Smallwood et al., 2023). The youths implored the ministers to perceive Indigenous youths as founts of brilliance, leadership, and imagination in lieu of a challenge. By expressing their desire to be heard, Aboriginal youths made it unequivocally clear that they wanted a voice in the decision-making process (Shay et al., 2019). Despite enduring negative stereotyping and racism, the youths involved in a project conducted by Shay et al. (2019) under the Lowitja Institute (Australia's only national Aboriginal community-controlled health research institute) demonstrated remarkable resilience and adeptness in navigating complex issues. Researchers on the ground reported that high schools in Queensland and Western Australia were discussing the value of integrating Indigenous cultural perspectives into their curriculum (Lowitja Institute, 2019). The youth also underscored the significance of pride, respect for elders, success, family and collective work, as well as their hope for inclusion in devising solutions (Lowitja Institute, 2019).

In a similar study conducted by Smallwood et al. (2023), the researchers explored Aboriginal young people's health and well-being experiences through their perspective. The results of the project's findings were conclusive, as determined by Shay et al. (2019). Despite finding a voice, young people still face significant issues of not being heard. This occurred predominately in the colonized systems, whether it be the education, health or justice systems; young Aboriginal people highlight the reoccurring oppression of their voice (Smallwood et al., 2023). Youth recognized the importance of engaging with the healthcare and education systems to avoid the correctional system, however, the lack of cultural safety and support were burdens on these experiences, a trend that the researchers parallel to the stereotyping of Indigenous populations in Canada (Smallwood et al., 2023). What has been identified in other colonized Indigenous populations, as well as Australia, is the need for the improvement of culturally

relevant approaches to healthcare delivery and education. “Where the promotion of relational approaches is integral, with the need for delivery and interactions to be centered around cultural values...to empower indigenous people to be self-efficient and self-determined” (Smallwood et al., 2023, p. 2098).

Battams et al. (2021) conducted a study to evaluate how Australian justice sector policies prioritize crime prevention and address social determinants of health that overlap with social determinants of incarceration. The study revealed that most crime prevention strategies in Australia focus on tertiary prevention methods such as diversionary courts and rehabilitation programs (Battams et al., 2021). On the other hand, there is a lack of emphasis on primary and secondary crime prevention strategies that aim to modify environments before crimes occur or provide early interventions for individuals (Battams et al., 2021). Additionally, there is a paucity of measures to address social determinants of incarceration, such as housing, employment and income, with inadequate accountability monitoring of justice sector strategies. Instead of heavy investment in private providers, better-funded strategic intersectoral collaboration, with specific coordination roles and cross-sectoral accountability mechanisms, is required. A shift towards a human rights discourse on incarceration is necessary to address the increasing rates of Aboriginal youth incarceration amid the "tough on crime" public debates (Battams et al., 2021).

Recent research by O'Brien and Trudgett (2020) has shed light on the correlation between Indigenous youth exclusion from school and their overincarceration in custody. The authors argue that real change is needed within the education system to ensure that cultural competence and capacity are prioritized for Indigenous youth before it's too late. This can start with decolonizing the relationship between Indigenous youth and the criminal justice system. Law enforcement must prioritize efforts to avoid arrest when addressing youth misbehavior and always weigh the detrimental consequences of incarceration against the promising future that young individuals hold for themselves and society (Sittner & Estes, 2023). As emphasized by the Productivity Commission, “we cannot afford to waste the opportunity that this agreement

presents. All Australians should expect that in three years time, the Commission will be providing a very different assessment” (p. 3).

Discussion

What has become clear is that the governments in both Canada and Australia have historically prioritized systemic, punitive, pan-Indigenous approaches to program creation without much consultation with distinct Indigenous groups. The process has been to create interventions without cultural consideration, inject millions of dollars into them and send them off hoping that something might change (Gillfeather, 2019; O’Brien et al., 2023). Canada’s correctional investigator (Ivan Zinger) has noted that the game is one of recognition politics, where reconciliation is touted everywhere but practiced hardly anywhere (Forester, 2023). Similar findings were explored in Australia, as emphasized by the government's own Productivity Commission, key government systems, policy-making processes and funding have not changed substantially due to inherent political punitive attitudes embedded within the system (Productivity Commission, 2024).

Despite these stagnant approaches, I argue that both Canada and Australia are beginning to move in the right direction. Reconciliation will ultimately be achieved when governments have prioritized the restoration of their relationship with Indigenous peoples in a continuous effort to eliminate their overincarceration (McGuire & Murdoch, 2022). The overall findings indicate that the recommendations offered to both the Canadian and Australian governments parallel in their scope. As the Productivity Commission (2024) emphasized, it is crucial for decision-makers to acknowledge their limited comprehension of the needs of Indigenous peoples. There must be a sharing of power and increased emphasis on the voices and perspectives of those experiencing the interventions. The Government of Canada has begun working on this through Indigenous roundtable discussions which take unique perspectives into account for program development. There is also consensus for stronger

accountability in monitoring and reporting progress of programs that already exist (Productivity Commission, 2024; Pfeifer et al., 2018).

Certain programs being funded today have existed for decades, but lack conclusive testing in their overall effectiveness (Ferguson et al., 2021; He et al., 2021). There is also a general consensus that the underlying issues (related to health, education and employment) must be addressed to alleviate broader social structures disadvantaging Indigenous peoples. Despite the positive initiatives being undertaken, it must be recognized that there is no one type of Indigenous culture, nor one type of issue confronting Indigenous youth (Swartz, 2021). As such, it has been suggested that any proposed responses to issues such as crime should be multi-faceted and distinction-based, reflecting the cultural complexity and historical legacy of Indigenous people.

According to Cesaroni et al.'s (2019) research on the overrepresentation of Indigenous young people and potential solutions, the researchers concluded that “the way forward seems apparent” (p. 124). Through talking circles held with various Indigenous groups in Canada (Anishinaabe, Haudenosaunee and Metis communities), the researchers found a general consensus that youth-centric programming for Indigenous young people should be developed in conjunction with key members of the Indigenous community (in particular, Elders and knowledge keepers) and embedded in Indigenous history, tradition, culture and ceremony. Programming should include young people as participants, developers and leaders with their own input. Indigenous youth are more likely to engage in programming and initiatives if they are anchored in history, tradition, culture and ceremony (Cesaroni et al., 2019).

Although the New Zealand system is far from perfect, with overrepresentation still prevalent, there are countless initiatives outside of the justice system funded by the Ministry of Māori Development through Te Puni Kōkiri that support local, community-based projects focused on health, education, economic development, and housing (Hamley et al., 2023). Today's young Māori face a world that is more enabling than what their parents and

grandparents experienced at the same age. Māori communities at the levels of iwi, hapu and whanau have come together to drive legal, political and societal change (Swartz, 2021). This collective strength has contributed to the increased visibility of Māori in commerce, community, and public life, shaping social affairs across the country (Grey et al., 2023). Māori leadership has expanded in critical areas such as health, housing, education, and iwi, hapu and whanau development, alongside greater constitutional, political and legal recognition of Māori (Hamley et al., 2023; Pfeifer et al., 2018).

Successful interventions in New Zealand have been found to include a whānau family approach, cultural connectivity and knowledge, addressing educational needs, social and economic well-being and employing people (preferably Māori) who young people can identify with (Paine et al., 2022). A holistic approach, involving whānau, community, iwi, police and other agencies working collaboratively to provide support has been proven effective in addressing the needs of at-risk youth (Paine et al., 2022). Parallel approaches should be adopted in Canada and Australia, with a focus on involving as many stakeholders as possible. While restorative approaches offer accountability and healing, it is important to prioritize a relational dynamic and aim for balance - in line with Tikanga values and programs such as He Korowai Oranga (Maori Health Strategy) which offers a framework to support Maori health status and promote whanau ora (Maori family well-being). By working with iwi Maori providers and Maori communities, as well as whanau, the health and government sectors can reduce the disproportionate health statistics for Maori.

New Zealand has received widespread recognition for its pioneering work in evolutionary restorative practices (Toki, 2018). Historically, criminal justice systems have relied on a traditional approach, that sees crime as a violation against the state and authorizes the state to determine and administer punishment (Hamilton et al., 2020). This must change to a shared power approach in which the community determines and issues punishment. In order to do so, Indigenous voices must be central to any discussion on program design and policy implications.

Indeed, modern justice systems are increasingly interested in harnessing restorative mechanisms for their potential reformatory power. This is in response to growing discontent with conventional justice, which is blamed for high incarceration rates, skyrocketing prison costs, and the disenfranchisement of both victims and offenders (Tauri, 2022). Restorative practices have, as a result, proliferated throughout the world and can be realistically visualized as the path forward toward reconciliation.

Conclusion

In understanding and addressing the various approaches taken by Canada, Australia and New Zealand in reducing Indigenous youth overincarceration, this thesis sought to fill the gaps evident in the international standpoint by providing new insights and relevant recommendations for a path forward. In utilizing a descriptive design with a multi-disciplinary research approach, this study explored Canada's current response toward addressing Call to Action 38 in addition to Australia's progress toward addressing Outcome 11 of Closing the Gap followed by recommendations from various sources in order to address the issue. In carefully exploring New Zealand's restorative framework as a viable approach, this thesis drew parallels between all three countries to explore relational frameworks for the future. The findings were conclusive and allowed for a general understanding of the paradigm.

It was found that while culturally-specific initiatives are needed, the underlying solution of incorporating Indigenous voices in program and policy design parallel in all three countries. While we should not blindly assume that we can easily overcome the enormity and complexities of this challenge, we must also resist defeatist attitudes that suggest the problem is insurmountable. It is our principled and pragmatic obligation to keep striving for better outcomes for young offenders and their families. Although this may be the most significant challenge facing any youth justice system, it also represents the most promising opportunity for meaningful and lasting change for serious young offenders.

Empirical insight into the issue of Indigenous youth crime is urgently needed. Given the prevalence of the overincarceration paradigm, the current state of research remains inadequate. Future studies must address the identified gaps in the literature and prioritize the specific needs of Indigenous youth involved in the justice system because “although research relating to Indigenous youth crime appears to be limited at best, there is a strong consensus that the subject is one of importance to governments, youth justice agencies, and researchers internationally” (Pfeifer et al., 2018, p. 273). To shed light on the contributing factors related to Indigenous youth crime, studies should adopt an integrated approach that examines the cumulative effects of these factors, rather than analyzing them in silos. Given the depth of challenges that Indigenous youth face, a comprehensive approach is warranted because “much more work is required in order to address the inherent biases and prejudices prevalent within the criminal justice system (Sittner and Estes, 2023, p. 26).

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