

Gladue...Not a Get Out of Jail Free Card

By Christine M. Goodwin

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- Overincarceration
- Longer sentences
- Frequent Segregation
- DO Applications
- Female Offenders

"There is no discretion as to whether to consider the unique situation of the aboriginal offender; the only discretion concerns the determination of a just and appropriate sentence" (*Gladue*, at para. 82).

Calls to Action

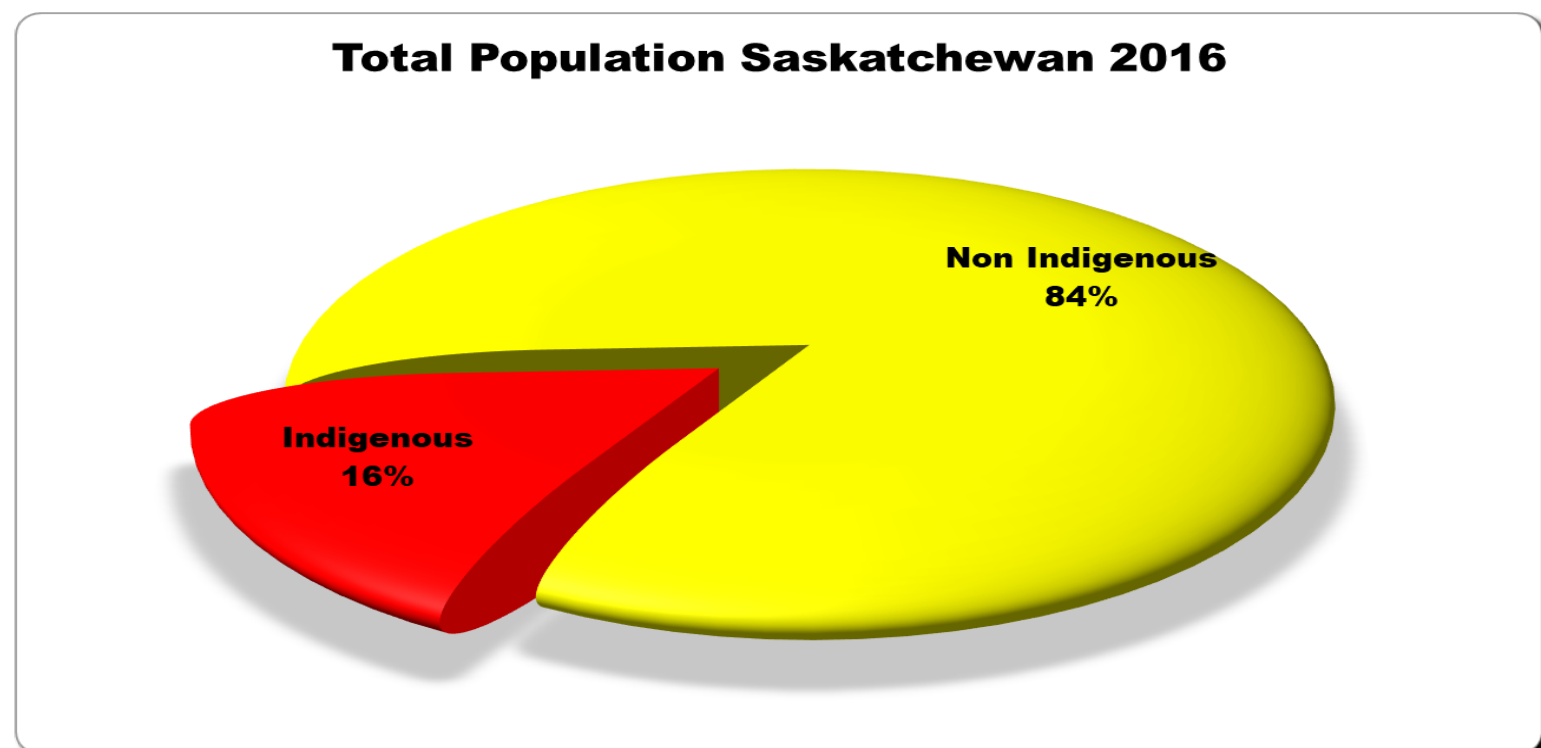
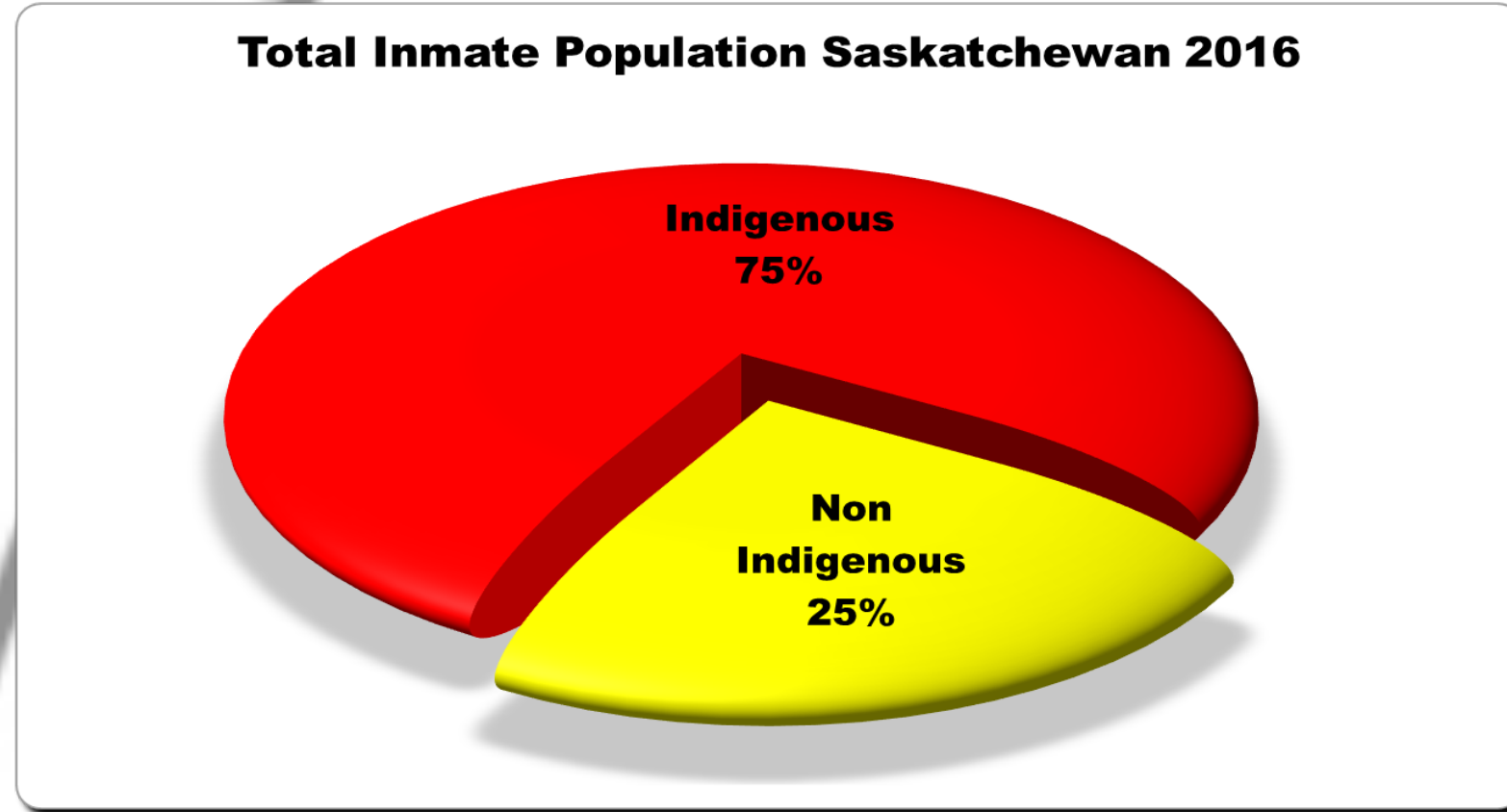
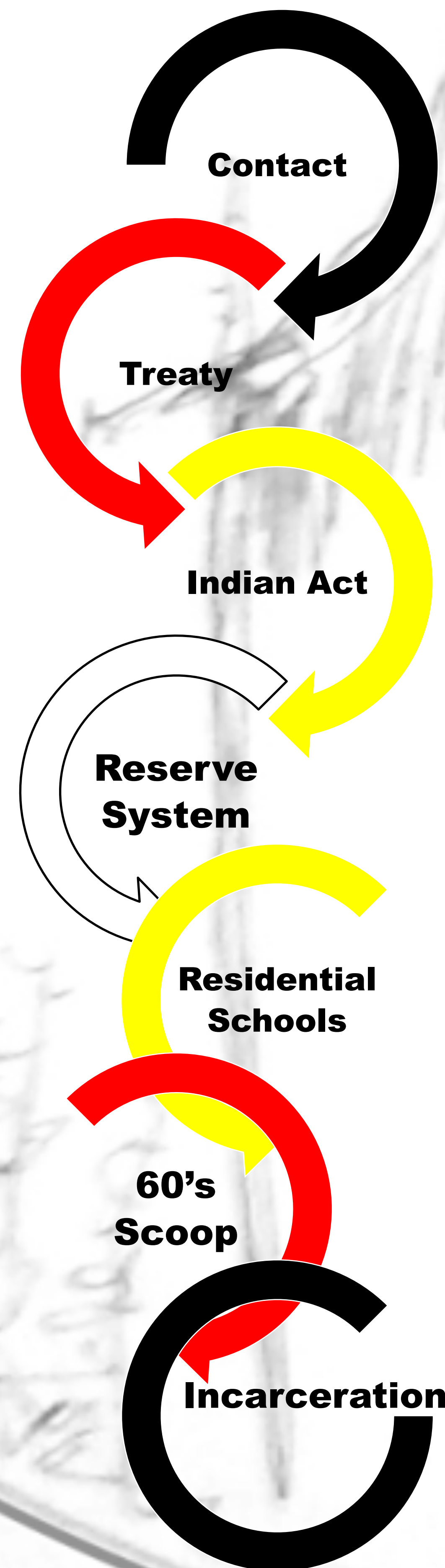
30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.

31. We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.

R. v. Gladue

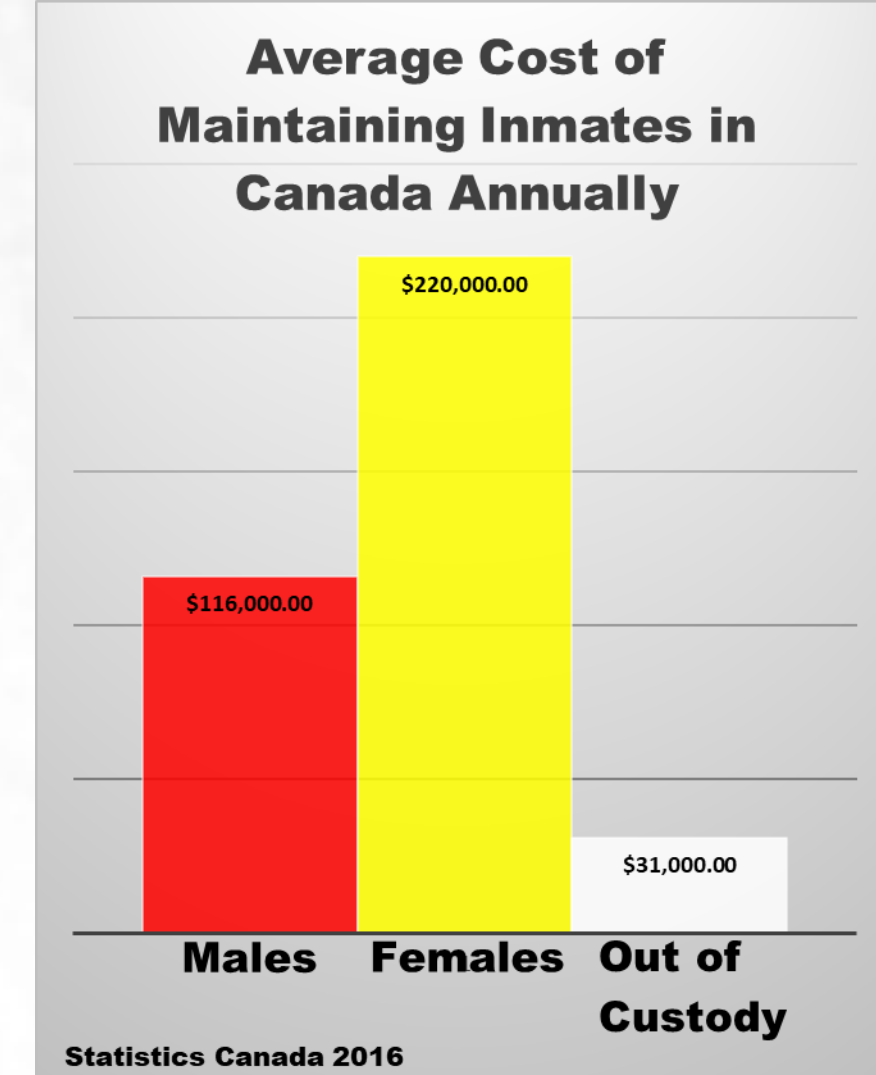
It is clear that sentencing innovation by itself cannot remove the causes of aboriginal offending and the greater problem of aboriginal alienation from the criminal justice system. . . . What can and must be addressed, though, is the limited role that sentencing judges will play in remedying injustice against aboriginal peoples in Canada. Sentencing judges are among those decision-makers who have the power to influence the treatment of aboriginal offenders in the justice system. They determine most directly whether an aboriginal offender will go to jail, or whether other sentencing options may be employed which will play perhaps a stronger role in restoring a sense of balance to the offender, victim, and community, and in preventing future crime.

Effects of Colonization



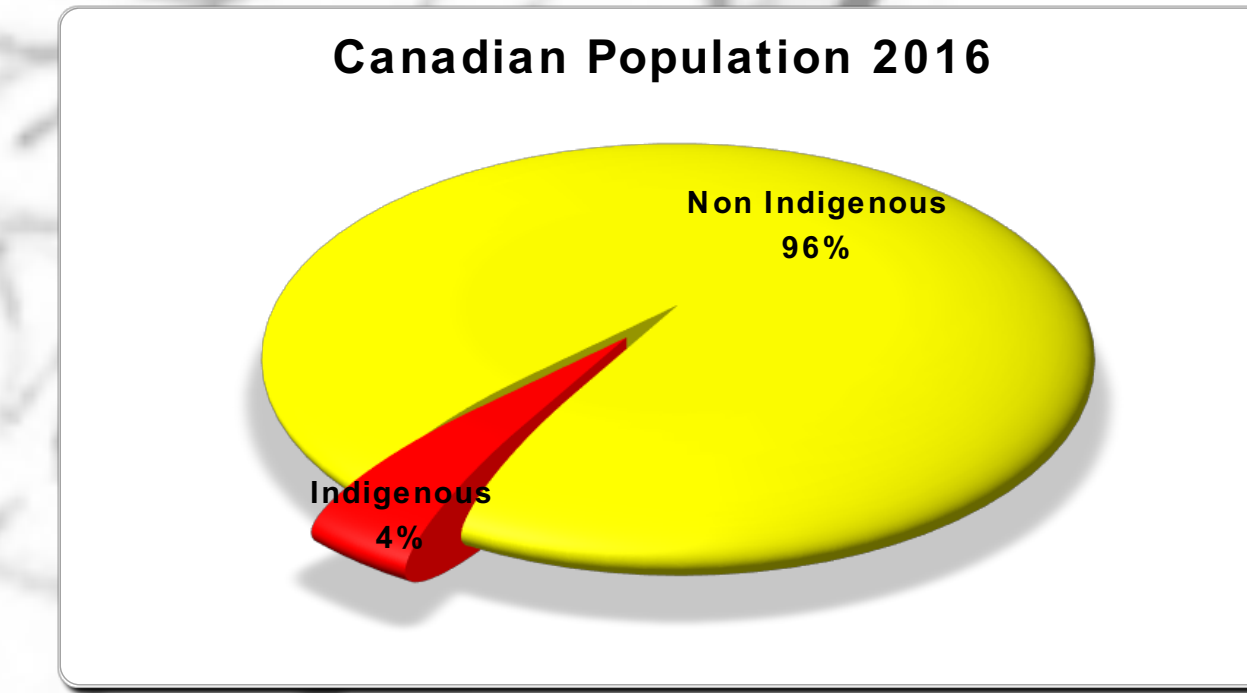
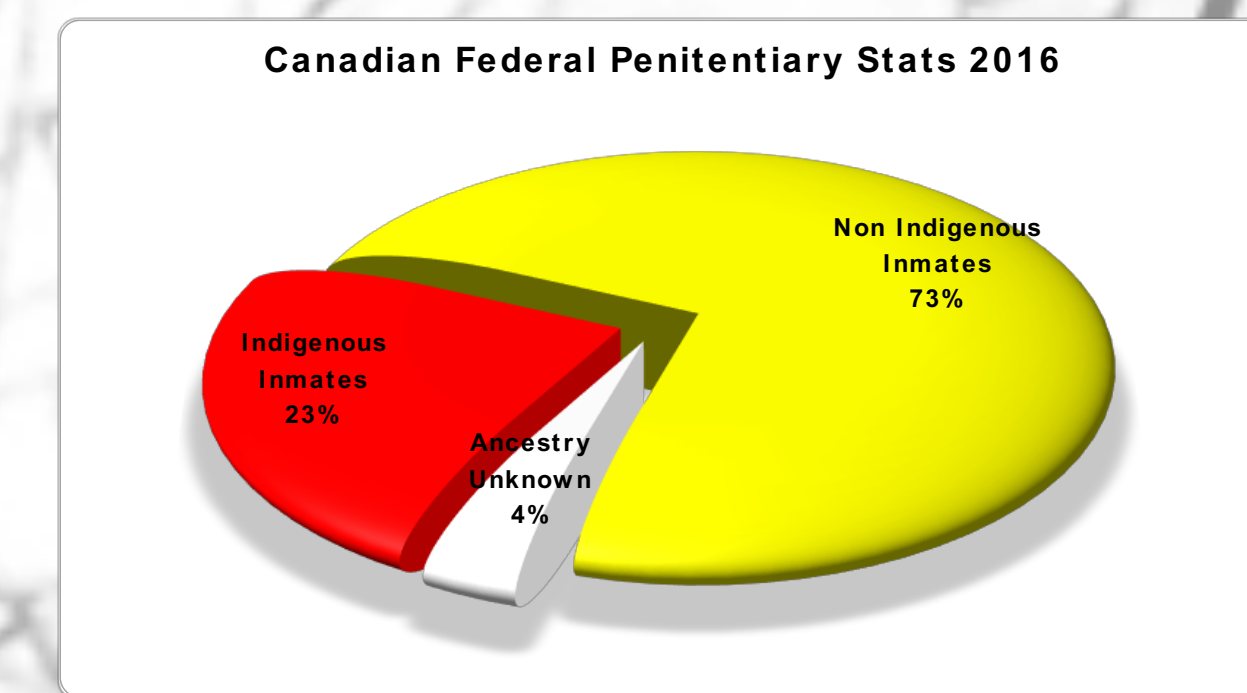
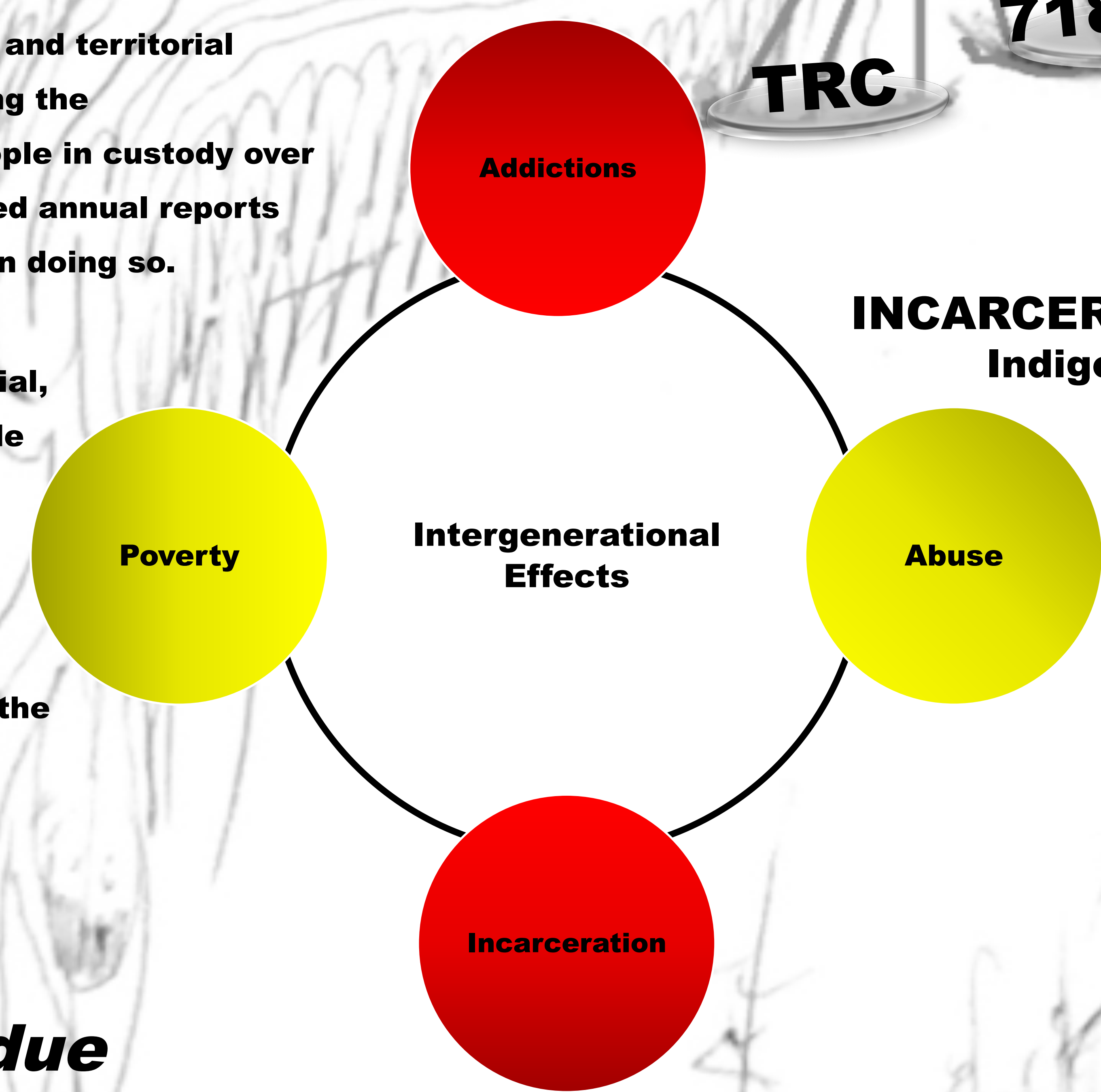
R. v. Ipeelee

Section 718.2 (e) of the Criminal Code is a remedial provision designed to ameliorate the serious problem of overrepresentation of Aboriginal people in Canadian prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing. Courts must ensure that a formalistic approach to parity in sentencing does not undermine the remedial purpose of s. 718.2 (e). Section 718.2 (e) does more than affirm existing principles of sentencing; it calls upon judges to use a different method of analysis in determining a fit sentence for Aboriginal offenders. The enactment of s. 718.2 (e) is a specific direction by Parliament to pay particular attention to the circumstances of Aboriginal offenders during the sentencing process because those circumstances are unique and different from those of non-Aboriginal offenders. To the extent that current sentencing practices do not further the objectives of deterring criminality and rehabilitating offenders, those practices must change so as to meet the needs of Aboriginal offenders and their communities. Sentencing judges, as front-line workers in the criminal justice system, are in the best position to re-evaluate these criteria to ensure that they are not contributing to ongoing systemic racial discrimination. Just sanctions are those that do not operate in a discriminatory manner. *R. v. Ipeelee* [2012] 1 S.C.R. at 435.



INCARCERATION ALTERNATIVES:

- Indigenous Traditional Sanctions
- Education/trade training
- Addictions treatment
- Elder counselling
- Mentor programs
- Life skills training
- Family Counselling
- Cultural awareness
- Medical/psych support



R. v. Ipeelee

...In current practice, it appears that case-specific information is often brought before the court by way of a Gladue report, which is a form of pre-sentence report tailored to the specific circumstances of Aboriginal offenders. Bringing such information to the attention of the judge in a comprehensive and timely manner is helpful to all parties at a sentencing hearing for an Aboriginal offender, as it is indispensable to a judge in fulfilling his duties under s. 718.2(e) of the Criminal Code. . *R. v. Ipeelee* [2012] 1 S.C.R. at 469 para 60.

GOOD FOR ONE GLADUE REPORT

THIS CAN NOT BE USED TO GET OUT OF JAIL

OVER REPRESENTATION OF INDIGENOUS OFFENDERS IS NOT A GAME

*Background artwork done by Ojibwe artist Randy Knott
 **All statistics are obtained from Statistics Canada 2015/2016