

Exploring the Constructions of 'Ideal' and 'Non-ideal' Victims in the Independent Assessment Process for Indian Residential School Abuse

Symposium of the World Society of Victimology
June 5-9, 2022

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The Independent Assessment Process for Indian Residential School Abuse

- The Indian Residential School system: abuse, neglect, and elimination
- Individual lawsuits in the 1990s and class action lawsuits in 2000s
- The Independent Assessment Process: redress for sexual and physical abuse
 - Quasi-judicial, informal process
 - 2007-2021, CAD \$3.2 billion
 - Individual awards up to CAD \$275,000
 - Written applications and adjudication hearings
 - Determines damages using a point system
- Methodological research design

II: Compensation rules

Level	Acts Proven	Compensation Points
SL5 Sexual Abuse Level 5	<ul style="list-style-type: none"> Repeated, persistent incidents of anal or vaginal intercourse. Repeated, persistent incidents of anal or vaginal penetration with an object. 	45-60
SL4 Sexual Abuse Level 4	<ul style="list-style-type: none"> One or more incidents of anal or vaginal intercourse. Repeated, persistent incidents of oral intercourse. One or more incidents of anal or vaginal penetration with an object. 	36-44
SL3 Sexual Abuse Level 3	<ul style="list-style-type: none"> One or more incidents of oral intercourse. One or more incidents of digital anal/vaginal penetration. One or more incidents of attempted anal or vaginal penetration (excluding attempted digital penetration). Repeated, persistent incidents of masturbation. 	26-35
PL Physical Abuse	<ul style="list-style-type: none"> One or more physical assaults causing a physical injury that: <ul style="list-style-type: none"> led to or should have led to hospitalization or serious medical treatment by a physician caused permanent or demonstrated long-term physical injury impairment or disfigurement caused loss of consciousness broken bones caused a serious but temporary incapacitation requiring bed rest or infirmary care of several days. Examples include severe beating, whipping, and second-degree burning. 	11-25
SL2 Sexual Abuse Level 2	<ul style="list-style-type: none"> One or more incidents of simulated intercourse. One or more incidents of masturbation. Repeated, persistent fondling under clothing. 	11-25
SL1 Sexual Abuse Level 1	<ul style="list-style-type: none"> One or more incidents of fondling or kissing. Nude photographs taken of the Claimant. The act of an adult employee or other adult lawfully on the premises exposing themselves. Any touching of a student, including touching with an object, by an adult employee or other adult lawfully on the premises which exceeds recognized parental contact and violates the sexual integrity of the student. 	5-10
OWA Other Wrongful Acts	<ul style="list-style-type: none"> Being singled out for physical abuse by an adult employee or other adult lawfully on the premises which was grossly excessive in duration and frequency and which caused psychological consequential harms at the H3 level or higher. Any other wrongful act committed by an adult employee or other adult lawfully on the premises which is proven to have caused psychological consequential harms at the H4 or H5 level. 	5-25



Critical victimology

- Research question: "How does settler colonialism regulate indigeneity in the construction of ideal and non-ideal victims?"
- Traditional conceptions of 'ideal' and 'non-ideal' victims (Nils Christie)
- 'Ideal' victims: 'weak, sick, old or very young'
- 'Non-ideal' victims: sufficient empowerment and 'strong counter-powers'
- Compliance with predetermined discourses of victimization and victimhood
- Gatekeepers of victim status



Theorizing settler colonialism

- Settler colonialism as a structure, not an event (Wolfe)
- Settler colonialism: a system of domination, oppression, and elimination of the colonized
 - Indigenous people are constructed as “Others”
 - Colonizer is constructed as an “exalted subject”
 - Binary oppositions: the colonizer and colonized
- Conflicting logics of settler colonialism
- Mutually dependent constructions of the colonizer and colonized



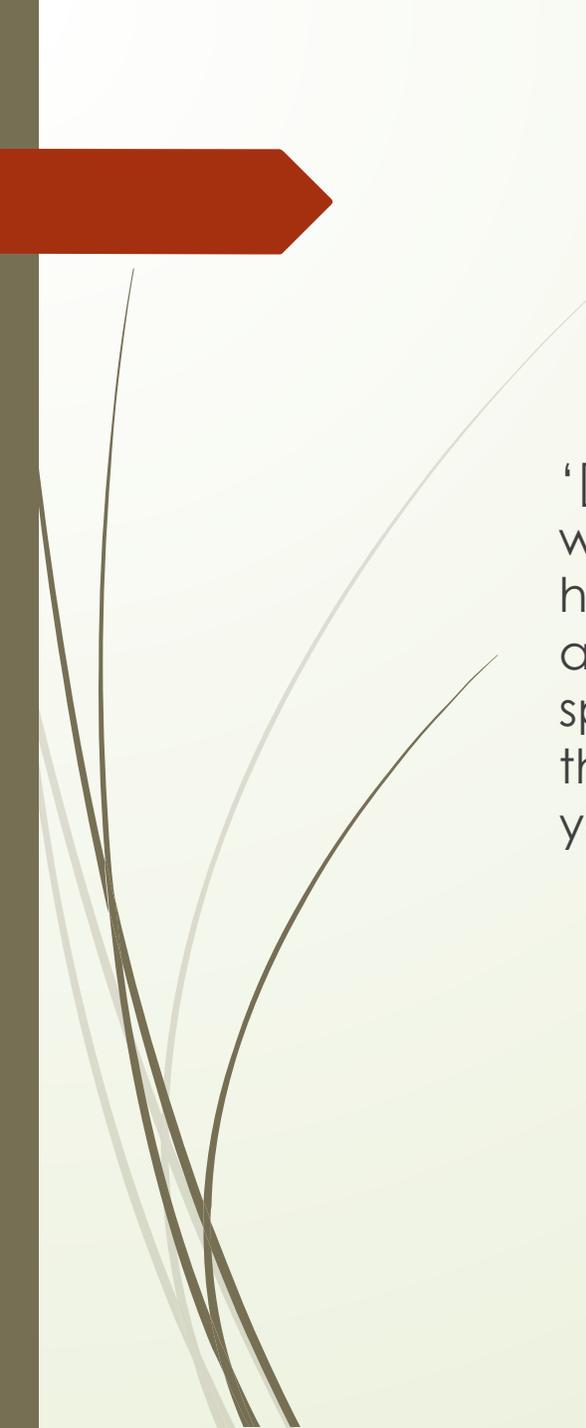
Critical Victimology and Settler Colonialism

- ❑ Critical victimology: who has the power to ascribe victim status?
- ❑ The focus on the underlying generative mechanisms
- ❑ Ongoing structural violence: a challenge for critical victimology
- ❑ Application of victim status: 'designated' and 'rejected' victims (Strobl)
- ❑ The 'hierarchy of victimisation' as a product of settler colonial discourses and the role of 'status-coaches' (Carrabine *et al.*)
- ❑ 'Non-ideal' victims as 'Victimological Others' (Walklate)
- ❑ Coloniser as a powerful 'entrepreneur' and the creation of the 'colonised subject'



The 'Ideal' Victim as a Credible and Reliable Witness

- Establishing the credibility and reliability of evidence
- Tests of memory: assumption that witnesses are not inherently trustworthy
- Epistemic violence and marginalisation of survivor epistemologies
- Survivor testimony must comply with Western legal standards: truth is singular, impersonal and objective (MacKinnon, Gilligan)
- Successful claimants must embody 'ideal' and 'non-ideal' victim characteristics
 - Precarious space
- Fails to account for lived realities and experiences



'[IAP lawyers and adjudicators] are not ready for this angry, impaired person who comes in just hanging on by an emotional thread, realized what they have to tell aloud, and had a few drinks for their courage, someone who is accusatory and blames everybody, whose story changes every time that they speak, you know, doesn't have a particularly powerful memory about ... here they sit as a 65 year old, something that happened to them when they were 8, you know, but who does, right?'

(Eric, leader of a national Indigenous advocacy organisation, personal communication)



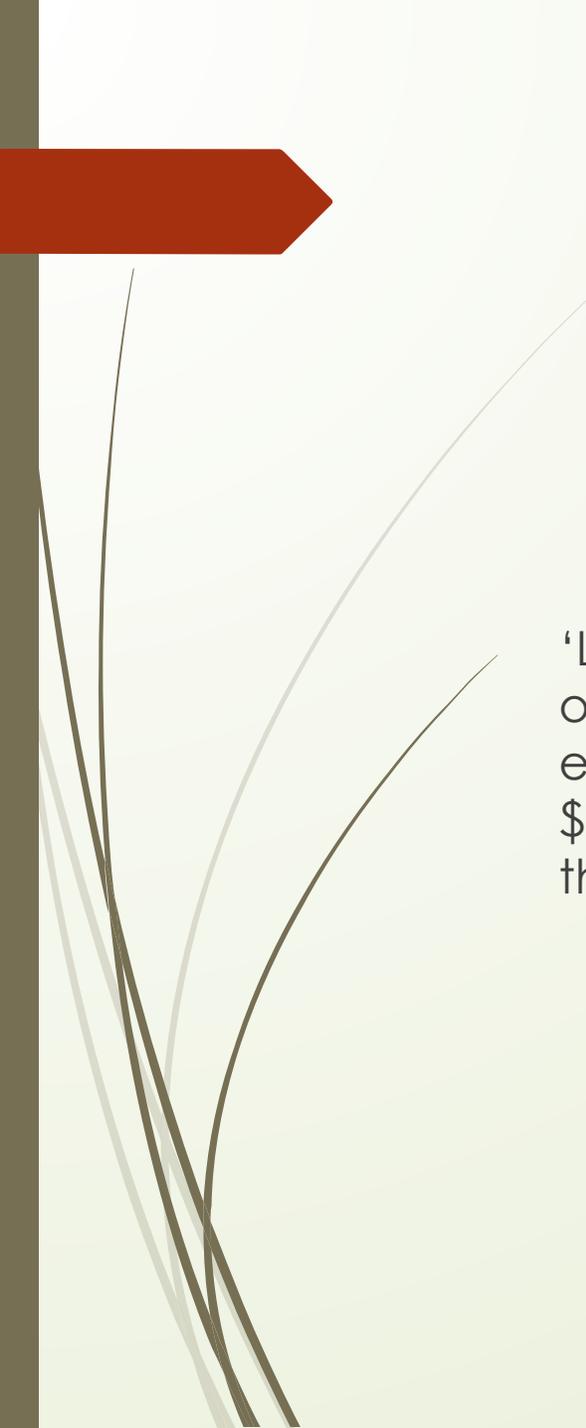
Performative Labour in the Construction of 'Ideal' Victims

- IAP lawyers and health support workers as 'status-coaches'
 - Manage and regulate the expressions of survivors' experiences of abuse
- Discursive representations of survivors' experiences
 - Negotiate the space between 'ideal' and 'non-ideal' states
 - Internalise Western legal procedures, norms, and expectations
 - Communicate victim status: 'sender-mediator-receiver'
 - Transformation of victims into settler colonial legal/governable subjects
- Victims' conduct shaped into legitimate and verifiable forms of suffering
- The irony of 'genuine human emotion' at the hearings



'Ideal' Victims as Financially Profitable Subjects

- Establishing the financial profitability of survivors' suffering
- 'Ideal' and 'non-ideal' victims: commodification of experiences of abuse
 - Material and discursive practices of colonial exploitation
- Hierarchy of victimisation: principles of risk assessment and financial value of a claim
 - Lawyers as 'gatekeepers' guarding access to victim status; disregarding survivor subjectivities
- Contingency fee as the driver for claim selection
- Financially profitable claims = 'designated victims' (Strobl)
- Consequences of not being selected for legal representation



'Let's say, someone who has a low SL1 [referring to a claim of the lowest level of sexual abuse], let's say some inappropriate sexual touching, no severe effect on their lives or their employment. They're looking at CAD \$10,000-\$15,000. In the best case, I'm going to make maybe what, \$3,000 off that?'

(Richard, IAP lawyer, personal communication)



Concluding remarks

- The IAP as a paradoxical space: inability **and** duty to compensate
 - The requirement to embody conflicting characteristics to attain victim status
 - The IAP as a structured and structuring process
 - Power and settler colonial privilege enable or deny the recognition of victim status
 - Active management, regulation, and construction of survivors' narratives of violence
 - Reproduction of settler colonial relations of domination and oppression
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