

Newfoundland and Labrador have been excluded, as have students who attended government-funded schools that were not identified as residential schools. These exclusions have led to new civil lawsuits against the government. The Commission urges all parties to seek expedited means of resolving this litigation.

Call to Action

- 29) We call upon the parties and, in particular, the federal government, to work collaboratively with plaintiffs not included in the Indian Residential Schools Settlement Agreement to have disputed legal issues determined expeditiously on an agreed set of facts.

Overrepresentation of Aboriginal people in prison

The dramatic overrepresentation of Aboriginal people in Canada's prison system continues to expand. In 1995–96, Aboriginal people made up 16% of all those sentenced to custody. By 2011–12, that number had grown to 28% of all admissions to sentenced custody, even though Aboriginal people make up only 4% of the Canadian adult population.¹²⁹ The situation of women is even more disproportionate: in 2011–12, 43% of admissions of women to sentenced custody were Aboriginal.¹³⁰

The causes of the over-incarceration of Aboriginal people are complex. The convictions of Aboriginal offenders frequently result from an interplay of factors, including the intergenerational legacy of residential schools. Aboriginal overrepresentation in prison reflects a systemic bias in the Canadian justice system. Once Aboriginal persons are arrested, prosecuted, and convicted, they are more likely to be sentenced to prison than non-Aboriginal people. In 2011–12, Aboriginal people made up 21% of those who received probation or conditional sentences (under which a defendant is found guilty but allowed to remain in the community).¹³¹

Parliament has recently passed legislation to prescribe mandatory minimum sentences of imprisonment for certain offences. Judges are required to impose these mandatory minimums. Additional restrictions have also been placed on community sanctions. These decisions have further contributed to the over-incarceration of Aboriginal people in prison. It is assumed that locking up offenders makes communities safer, but there is no evidence to demonstrate that this is indeed the case. There are concerns that Aboriginal people are not receiving culturally appropriate rehabilitative programs in federal prisons, and they are even less likely to have access to such programs in provincial correctional institutions for those people serving sentences of less than two years.

Violence and criminal offending are not inherent in Aboriginal people. They result from very specific experiences that Aboriginal people have endured, including the