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Oppression and privilege: two **Canadian** stories in the rule of law

The rule of law applies equally to everyone; no one is above the law. Yet the rule of law has never been well-defined or equally applied for Indigenous peoples.

OTTAWA-The rule of law is defined as "the restriction of the arbitrary exercise of power by subordinating it to well-defined and established law." The **Canadian** Charter of Rights and Freedoms states that the rule of law is one of the principles upon which **Canada** was founded. Fundamentally, it means that the law applies equally to everyone; no one is above the law. Yet the rule of law has never been well-defined or equally applied for Indigenous peoples.

In applying the rule of law in **Canada**, the duelling stories of oppression and privilege exist, contributing to an inequality in the application of justice as it pertains to Indigenous peoples. At times, it seems the protections entrenched in the Charter only apply to the provincial and **federal** governments and industry. The concepts of equality, transparency, fairness, and participation in decision making-all principles of the rule of law-often forego Indigenous inclusion. How do we, as Indigenous peoples, achieve equity before the law when we are denied the basic right to peaceful demonstration, as is seen currently with the Wet'suwet'en hereditary chiefs?

As a First Nations citizen and a woman of **Canada**, the law has been applied with the principle of oppression and not the principle of equality when compared to other women and citizens of **Canada**. For some to perish, others must be prospering. So who, then, is prospering above the law? For if the law applied equally to everyone, all **Canadians** should have gone to residential school and been impounded onto a reserve system.

Canada is the only country in the world to have an Indian Act that continues to keep the original peoples in a state of political, social and economic inequality. Continuing today, this level of oppression has disallowed Indigenous peoples from having the social and political power to bring about equity in the rule of law.

The rule of law requires two sides: those who set the rules and those who enforce them. As professor Jocelyn Thorpe of the University of Manitoba explains, the Mounties (**RCMP**) were created to assert sovereignty over Indigenous peoples and their lands.

"**Canada's** first prime minister, **Sir John A. Macdonald**, got the idea for the Mounties from the Royal Irish Constabulary, a paramilitary police force the British created to keep the Irish under control." Steve Hewitt, a senior history lecturer at the University of Birmingham states: "... instead of the Irish, [the **RCMP**] would control the Indigenous people already living on the land... The job of the Mounties 'effectively, was to clear the plains, the Prairies, of Indigenous people. Ultimately, they were there to displace Indigenous people, to move them onto reserves whether they were willing to go or not."

To this day, it is the Mounties who are called into action when Indigenous peoples resist. As the Missing and Murdered Indigenous Women and Girls Inquiry's report states, "This historic role of the **RCMP** has changed significantly. The **RCMP** must still enforce present-day discriminatory and oppressive **legislation** and policies in areas such as child welfare and resource disputes." Yet how can we have reconciliation with a police force that carries such negative and historical baggage?

Indigenous peoples are in a Catch-22. If we continue to be silent we won't move ahead. We need to have this uncomfortable conversation with **Canadians** to inform them of the injustice of life shaped by the Indian Act. This act has entrenched Indigenous peoples' inequality in **Canada**. It has allowed other **Canadians** and organizations to infiltrate our lives so that we continue to live under threat. **Canada**, whose governmental policies have created deep structural violence, continues to contribute to the enabling of industries' various forms of rape and plunder.

Indigenous peoples face unique and sustained structural inequalities that jeopardize their lives; health; security; economic opportunity; and voice and autonomy. It is time we, as a country, acknowledge and reflect on the inequities that exist in applying the rule of law in **Canada**. With this fundamental understanding of truth, we can then truly begin the process of reconciliation.

Manitoba Senator **Mary Jane McCallum** is a member of the ISG, who was appointed to the **Senate** in 2017 and retires in

2027.

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