

Rethinking Risk: Context and Interpretation in Violence Risk Assessment of First Nations, Inuit, and Métis Peoples

Alicia Nijdam-Jones, Ph.D., R.Psych





LAND ACKNOWLEDGMENT

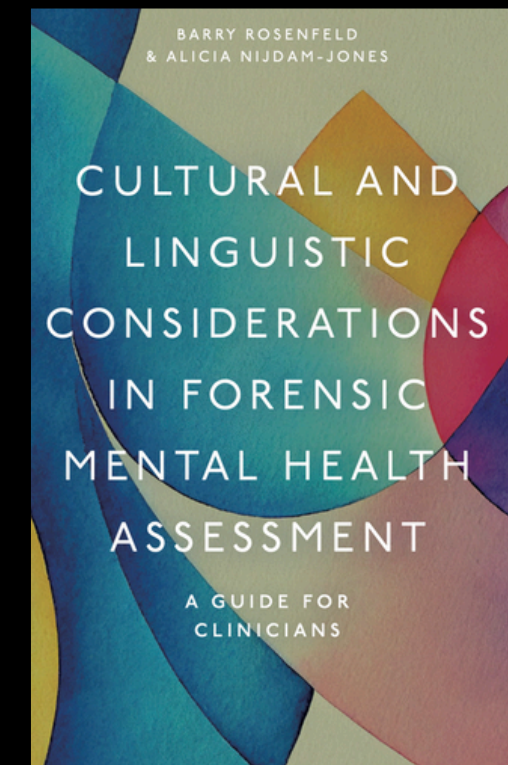
Simon Fraser University respectfully acknowledges the unceded traditional territories of the Coast Salish peoples, including the səlilwətał (Tsleil-Waututh), kwikwəłəm (Kwkwetlem), Skwxwú7mesh Úxwumixw (Squamish) and xʷməθkʷəyəm (Musqueam) Nations, on which SFU Burnaby is located.

I respectfully acknowledge that I also live, work, and learn on the original lands of Anishinaabeg, Ininiwak, Anisininewuk, Dakota Oyate and Dene, and on the National Homeland of the Red River Métis, and my water is sourced from Shoal Lake 40 First Nation.

MY POSITIONALITY

Alicia Nijdam-Jones, Ph.D., R.Psych.

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Presentation Outline

- 1 FNIM overrepresentation in the justice system
- 2 Violence risk assessment?
- 3 Gladue and Risk: Alignment and Gaps
- 4 Importance of Context
- 5 Case examples
- 6 What to Look for in Practice

Learning Outcomes:

- Understand how structural and colonial factors relate to violence risk
- Recognize how context shapes interpretation of risk evidence
- Identify what to look for when evaluating risk assessment reports

INTERGENERATIONAL IMPACTS OF COLONIALISM

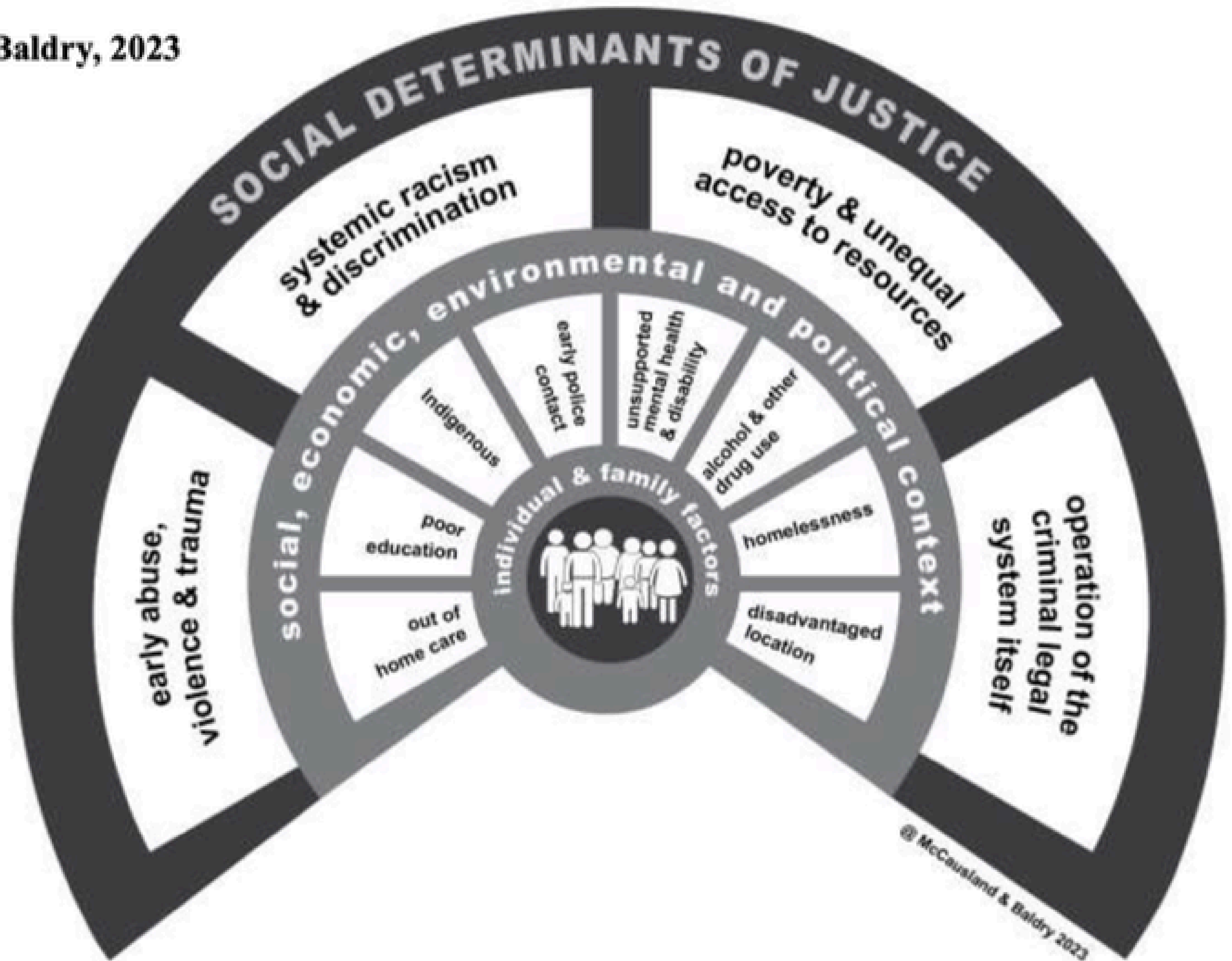
Colonial & Structural Context

- Intergenerational trauma
- Disrupted family and community systems
- Inequitable access to resources

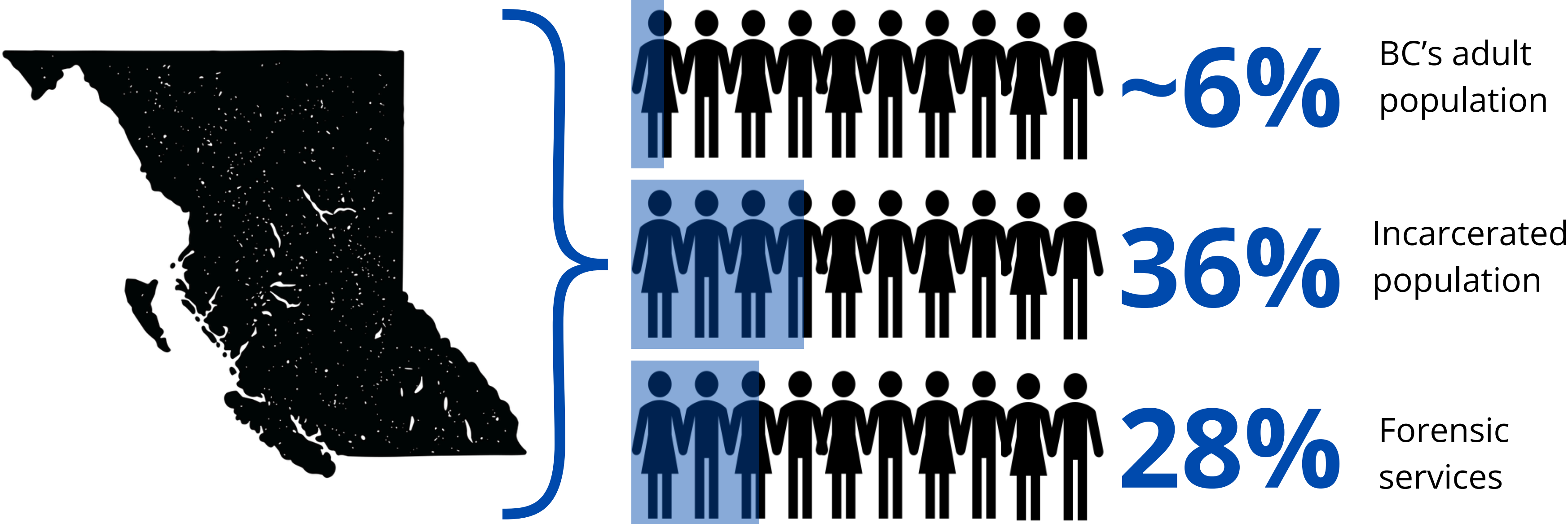
Overrepresentation in the Criminal Legal System (CLS)

- First Nations, Inuit, and Métis (FNIM) people represent 25-35% of those incarcerated, 4-5% of the adult population
- The number of FNIM adults in custody increased by 22.5% between 2012-2022





DISPROPORTIONATE SYSTEM CONTACT



Section 718.2(e) Canadian Criminal Code (1996)

"All available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders."



R. V. GLADUE (1999)

- Two key considerations in sentencing:
 - Role of unique systemic and background factors affecting Indigenous persons
 - availability of culturally appropriate sanctions and alternatives to incarceration
- Sentencing judges have a duty to consider this information and make further inquiries where needed
- Emphasizes individualized, context-driven sentencing
- Commonly operationalized through Gladue factors and Gladue reports
- Reaffirmed and clarified in R. v. Ipeelee (2012)



INDIGENOUS OVERREPRESENTATION IN THE CRIMINAL LEGAL SYSTEM



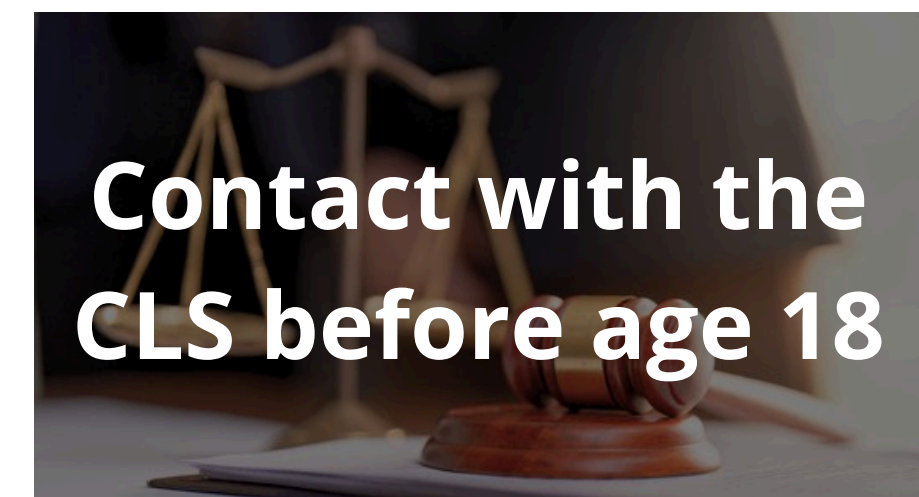
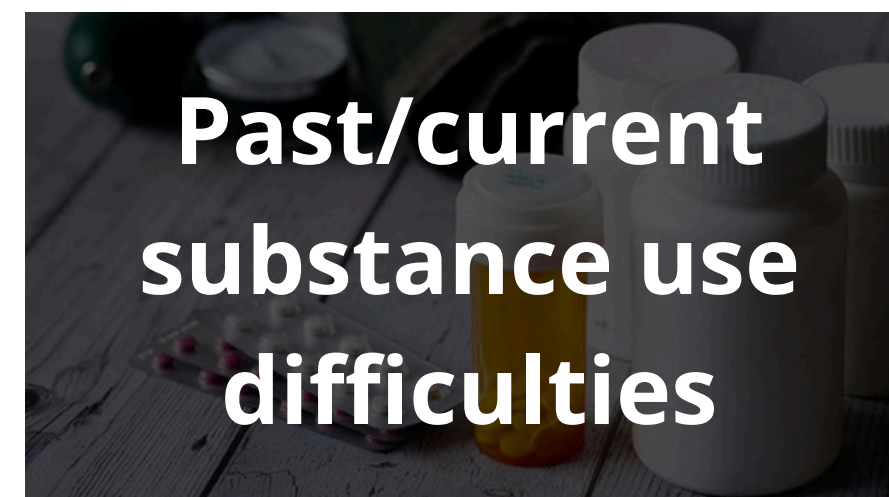
Note: fiscal years.

Source: Correctional Service of Canada • Anna Mehler Paperny | REUTERS

INEQUITIES IN ACCESSING SPECIALIZED FORENSIC MENTAL HEALTH SERVICES

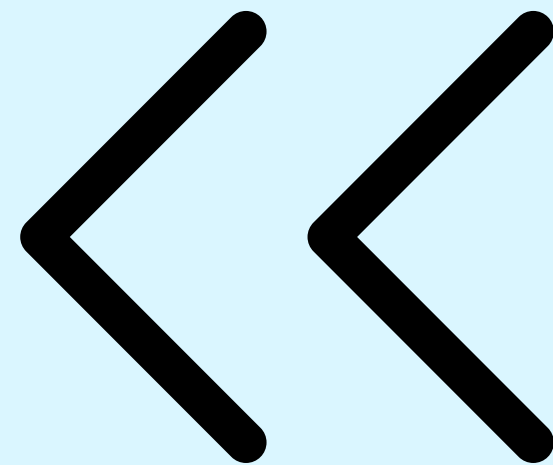
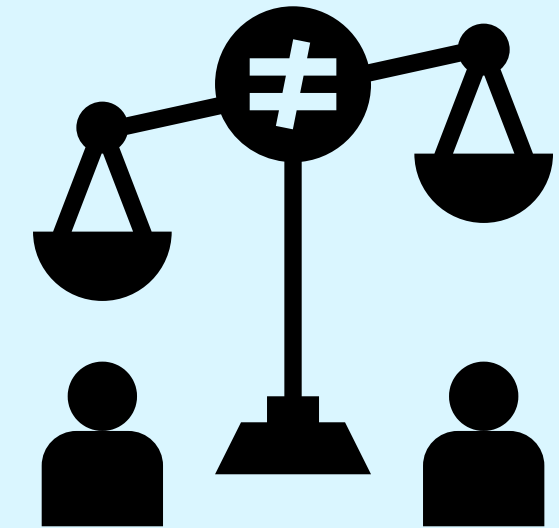
Despite FNIM individuals being **equally likely (56% vs 44%) to be referred** by the courts for an NCR assessment as White individuals.

- FNIM individuals are **57% less likely to have an expert recommend that they are eligible for the NCR defense** than White people
- FNIM individuals had twice as many social determinants of criminalization compared to White individuals.
 - The link between ethnicity and expert recommendation for NCR is largely explained by the **social determinants of criminalization** they are exposed to



WHAT THIS RESEARCH DEMONSTRATES...

The same colonial legacies that increase an FNIM individual's risk of involvement in the CLS REDUCE their chances of receiving specialized mental health services.



The forensic assessment process itself appears to be actively hindering reconciliation and equitable access to forensic mental health services.

**WE NEED TO LOOK
AT HOW RISK IS
ASSESSED**



WHERE GLADUE AND RISK ASSESSMENT SHOULD MEET

- Gladue requires consideration of context and systemic factors
- Risk assessment evaluates the likelihood of future violence

Context should shape how risk factors are interpreted and weighted



CURRENT DIRECTIONS IN VIOLENCE RISK ASSESSMENT

General Definition: Process of using risk factors to estimate the likelihood of an outcome occurring in a population

Structured Components of Violence Risk Assessment Process

- Identify Risk Factors (idiosyncratic v. systematic)
- Measure Risk Factors (yes/no v. level)
- Combine Risk Factors (explicit v. idiographic)
- Produce Final Risk Estimates (probability v. category)

Static vs. Dynamic predictors are a crucial distinction for analysis

- Static (“historical”) risk factors are unchanging regardless of treatment, age or medical changes
- Dynamic (“contextual/changeable”) risk factors are central to assessments and management

Goal of risk assessment is to identify points of intervention

- Much more important to identify strategies to reduce risk, not just estimate likelihood



WHAT IS A RISK FACTOR?

- Evaluators (and attorneys) often have difficulty conceptualizing and interpreting risk factors
 - A risk factor **MUST** play a causal role in violence
 - Can be indirect, but simple correlation is not enough
 - Frequently distinguished by nature of risk factor



MISUSE OF RISK FACTORS IN ASSESSMENT

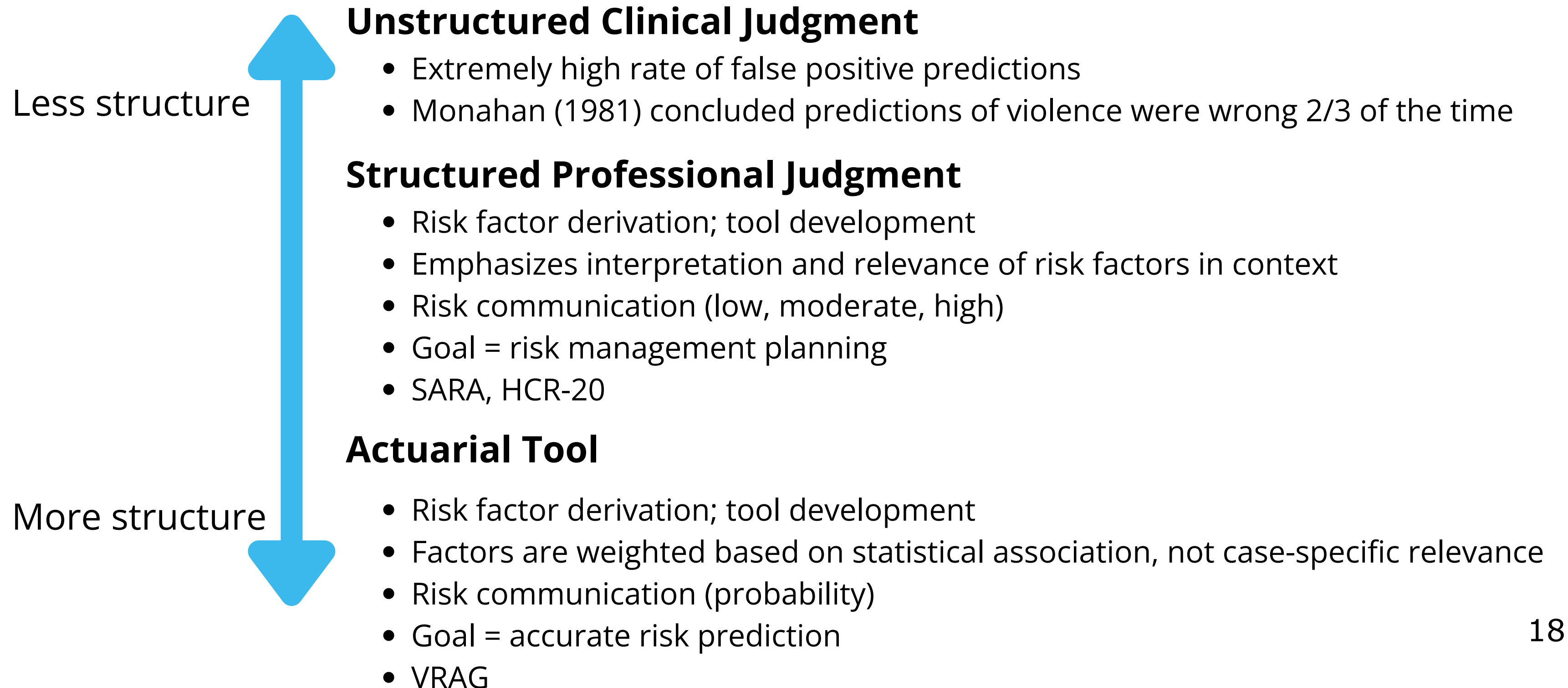
- Evaluators frequently misstate the nature and relevance of “risk factors”
 - Identify factors that cannot be reliably ascertained or are of questionable relevance (e.g., insight)
 - Rely excessively on static (unchangeable) variables
 - Cross-examination can help elucidate:
 - Whether the risk factor identified is genuinely relevant to the risk at hand

Whether any research supports the clinician’s opinion and whether a “successful” intervention would impact risk



VIOLENCE RISK ASSESSMENT

GENERAL PRINCIPLES



A SAMPLE ACTUARIAL (VRAG-R)

The Violence Risk Assessment Guide (VRAG-R) was developed to aid in assessing psychiatric patients

- Primarily used with those found NCR and hospitalized for violent behaviour
- 12 variables weighted by original statistical analysis

The problems:

- Ignores potentially important variables (all static)
- Accuracy of 5 and 10 year risk estimates is weak
- Provides no guidance for monitoring, reducing risk

- Lived w/ both biological parents to age 16: (Yes: -2, No: +3)
- Elementary school maladjustment: (No Problem = -3; Slight/Moderate Problem = +1; Severe Problem = +4)
- Failure on prior conditional release: (No: 0, Yes: +3)

THE SPJ APPROACH: HCR-20

- Structured, but not algorithmic
 - Identifies relevant risk factors without fixed weights
 - Emphasizes case-specific relevance and interpretation
 - Domains: Historical, Clinical & Risk Management
- How risk factors are used:
 - Integrates static and dynamic information
 - Factors are considered and weighed in context
 - Not all factors are treated as equally important
- Output:
 - Risk formulation (how and why risk occurs)
 - Informs decisions and interventions
 - Communicated as low / moderate / high, not just a score

Historical (History of problems w/ ...)

- Violence
- Antisocial Behavior
- Relationships
- Employment
- Substance Use
- Major Mental Disorder
- Personality Disorder
- Traumatic Experiences
- Violent Attitudes
- Treatment/Supervision Response

Clinical (Recent problems w/ ...)

- Insight
- Violent Ideation
- Symptoms of Major Mental Disorder
- Instability
- Treatment/Supervision Response

Risk Management (Anticipate problems w/ ...)

- Professional Services
- Living Situation
- Personal Support
- Treatment/Supervision Response
- Stress or Coping

A comparative study of violence risk assessment tools: A systematic review and metaregression analysis of 68 studies involving 25,980 participants

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^a Department of Psychiatry, University of Oxford, Warneford Hospital, Oxford, OX3 7JX, UK

^b Swedish Prison and Probation Service, and Centre for Violence Prevention, Karolinska Institute, Sweden

Table 3

Median area under the curve produced by nine risk assessment tools ranked in order of strength.

Tool	<i>n</i>	<i>k</i>	Median AUC	<i>IQR</i>
SVR-20	380	3	0.78	0.71–0.83
SORAG	1599	6	0.75	0.69–0.79
VRAG	2445	10	0.74	0.74–0.81
SAVRY	915	8	0.71	0.69–0.73
HCR-20	1320	8	0.70	0.64–0.76
SARA	102	1	0.70	–
Static-99	8246	12	0.70	0.62–0.72
LSI-R	856	3	0.67	0.55–0.73
PCL-R	2645	10	0.66	0.54–0.68

Note. *n* = sample size; *k* = number of samples; AUC = area under the curve; *IQR* = interquartile range.

R. V. EWERT (2018)

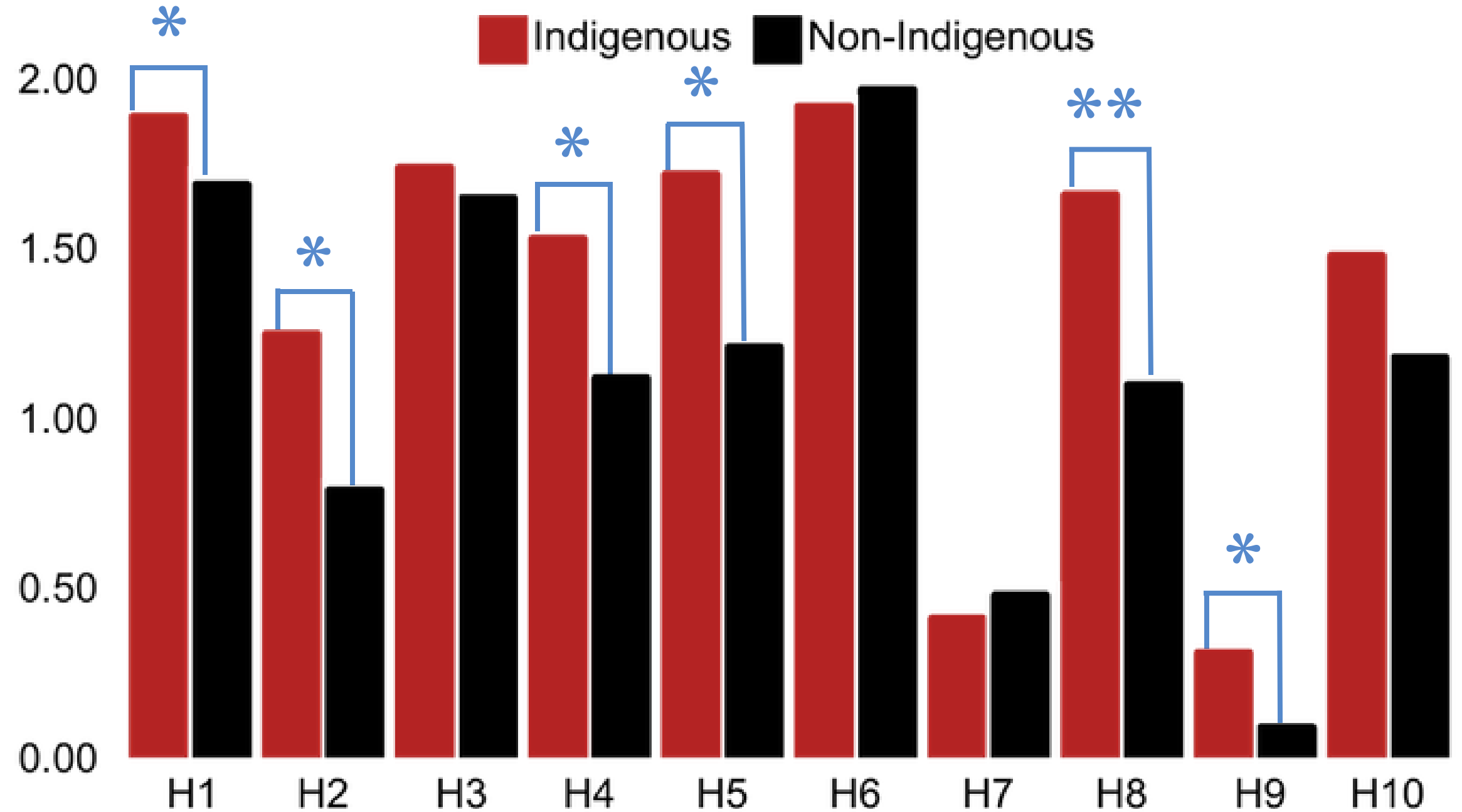
- Correctional authorities must ensure risk assessment tools are empirically valid for Indigenous individuals
- Use of tools without validation raises concerns about fairness and accuracy
- Highlights potential cultural bias in actuarial risk assessment
- Risk classification affects security level, programming, and release decisions
- Raises tension between contextual sentencing (Gladue) and actuarial risk practices



HCR-20: Historical Factors (N = 124)

History of Problems with:

- H1 Violence ↑
- H2 Antisocial Behavior ↑
- H3 Relationships
- H4 Employment ↑
- H5 Substance Use ↑
- H6 Major Mental Disorder
- H7 Personality Disorder
- H8 Traumatic Experiences ↑
- H9 Violent Attitudes ↑
- H10 Treatment/Supervision



* $p < .05$ ** $p < .001$
(Claeys et al., 2026)

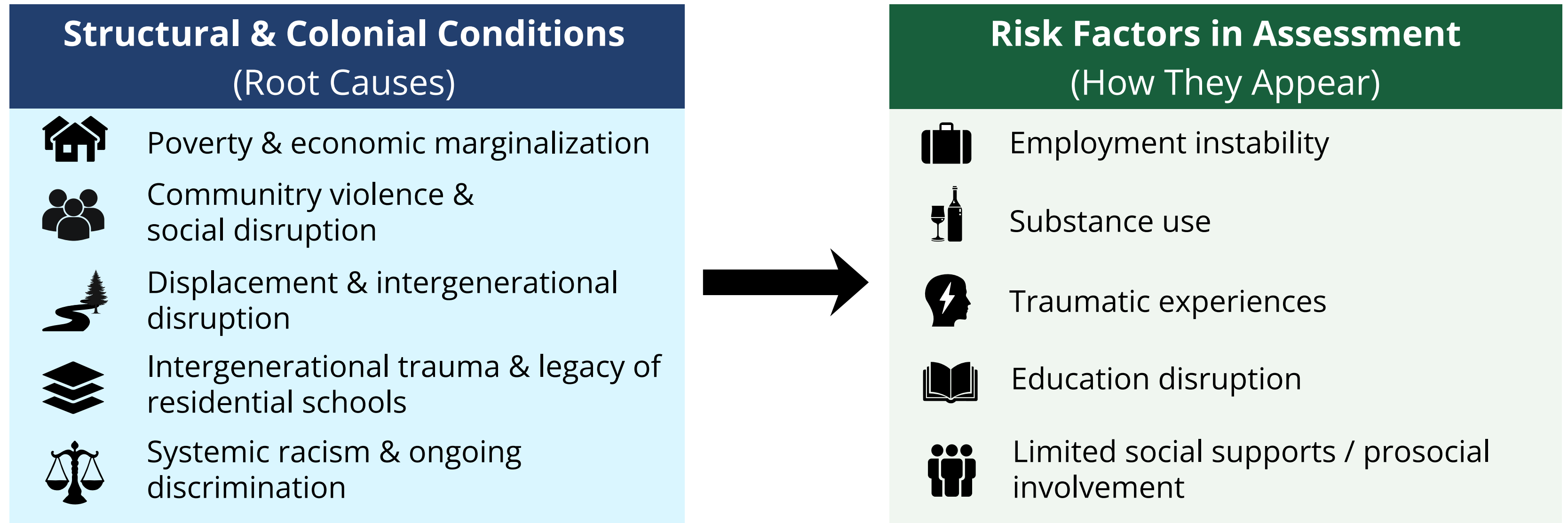
HCR-20 SCALE SCORES AND SUMMARY RISK RATINGS (N = 124)

	Indigenous <i>M(SD)</i>	Non-Indigenous <i>M(SD)</i>	Effect Size <i>(r)</i>
Historical**	13.75(3.43)	11.23(3.34)	0.37
Clinical	5.95(2.17)	4.98(2.82)	0.17
Risk Management	5.40(2.07)	4.43(2.27)	0.21
Total*	25.10(5.86)	20.45(7.26)	0.33
Summary Risk Rating*	3.51(1.17)	2.56(1.35)	0.35

* $p < .05$ ** $p < .001$
(Claeys et al., 2026)

COLONIAL FACTORS UNDERLIE RISK FACTORS

Historical experiences shaped by colonialism are often treated as individual risk



Why this matters

1 Many risk factors are **downstream effects** of colonialism and inequality

2 When treated as individual risk, they can **inflate perceived dangerousness**.

3 Ignoring underlying causes **perpetuates the cycle** and harms of colonialism.



*Contextualizing these factors helps us determine their **relevance to current risk** and develop **fairer, more appropriate** recommendations.*

LIMITATIONS OF RISK ASSESSMENT IN FNIM CONTEXTS

- Risk tools are developed and validated primarily in non-Indigenous populations
- Predictive validity differs across populations/tools
 - Most tools demonstrate moderate predictive validity but often have significant ethnoracial differences, particularly for static measures
 - Dynamic factors and change are especially important (Olver et al., 2024)
- Many “risk factors” reflect structural conditions (e.g., poverty, systemic racism)
 - These factors are often counted as risk, rather than interpreted in context
 - These same structural conditions can also influence the outcomes being predicted



DOES CONTEXT ACTUALLY CHANGE DECISIONS?

Experimental study of forensic professionals (Monjazebe, 2026)

- Participants reviewed the same Indigenous case, presented in three ways:
 - Risk-based report → standard risk factors only
 - Hybrid report → Gladue factors added, but separate
 - Gladue-based report → context integrated into risk formulation
- Findings:
 - Lower perceived risk when context was integrated
 - Higher likelihood of parole decisions
 - Fewer and less restrictive conditions
 - More culturally responsive recommendations
 - And omitting context led to the most punitive outcomes:
 - Especially in high-risk cases

Currently there is...

- Years of recognition of Indigenous over-representation
- Significant changes to law and sentencing procedures
- Increased concern about risk assessment procedures

But...

- No understanding of the application of Gladue principles
- No understanding of how risk assessment is factored in sentencing decisions with Indigenous accused
- Despite changes, the proportion of incarcerated Indigenous continues to increase



How do judges integrate and weigh Gladue factors with risk assessment data in reporting their written sentencing decisions?

Legal Case Review - 1999 to 2022 ($N = 199$)

- Are Gladue factors actually incorporated into risk assessments?
- How are structural factors interpreted when they appear as “risk factors”?
- How much weight do courts give to risk assessment evidence?

(Nijdam-Jones, Layden, & Burgess, 2026)



GLADUE FACTORS ARE OFTEN MISSING FROM RISK DISCUSSIONS

199 Cases = 214 Evaluators
= 136 cases with 1 Evaluator
= 39 cases with 2 Evaluators
= 24 cases risk assessment not discussed



25.7%
***n* = 55**



74.3%
***n* = 159**

What Gladue factors are reported to be considered by risk assessors?

- Substance use, mental health, family circumstances, and abuse
- <5%: Residential school, living situation, foster care, physical health, systematic factors, witness to community violence, poverty and racism

How often do sentencing judges disregard or overrule expert opinions regarding violence risk in light of relevant Gladue considerations?

- Most judges rely heavily on VRA evidence (60%)
- Minority (1.6%) dismiss it, Cultural competency raised 3% of evaluators

What judicial consideration or weight is given to expert opinions regarding violence risk in Gladue cases?

- Less than half of judges (44%) meaningfully integrate risk assessment data to their decision-making



EXPLORING THE DISCUSSION OF COLONIAL CONTEXT IN FORENSIC REPORTS ($N = 43$)

What are evaluators writing?

1

What colonial factors are being documented in forensic assessment reports?

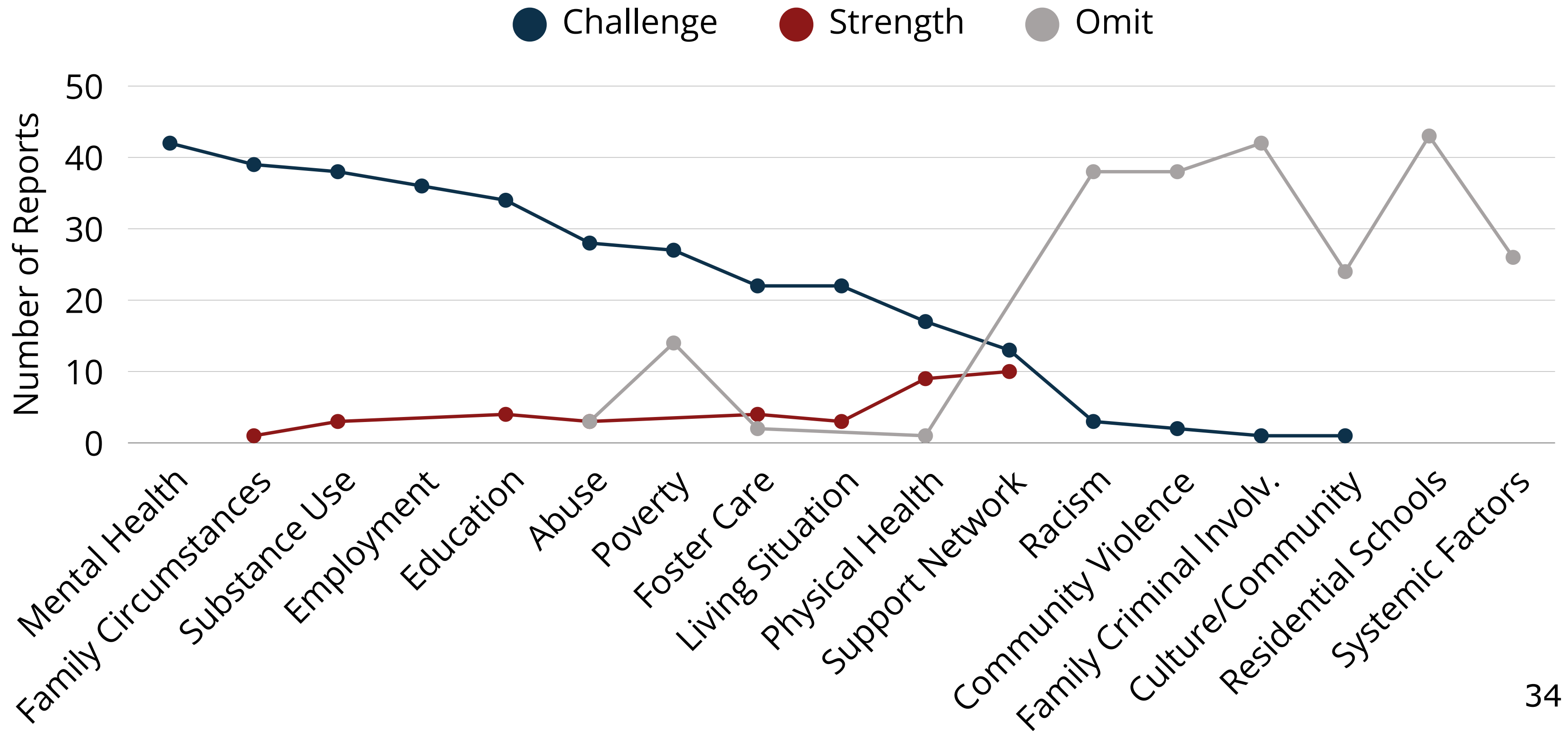
2

How are colonial factors being discussed in relation to the unique circumstances and background for FNIM people?

Colonial Factors Coded

1. Family Circumstances
2. Family Criminal Involvement
- 3. Abuse**
4. Residential Schools
- 5. Foster Care**
- 6. Community Violence**
7. Current Support Network(s)
- 8. Substance use**
9. Community & Culture
10. Systemic Factors
- 11. Education**
- 12. Employment**
13. Physical Health
14. Mental Health
- 15. Living Situation**
- 16. Poverty**
17. Racism

PRESENCE OF COLONIAL FACTORS



MENTIONS FNIM BACKGROUND OR IDENTITY

44.19%
(n = 19)

*"[Name] is a [age] **Indigenous man.**" (MB 243, p. 2)*

*"[Name] is a [age] **Indigenous female** who has treaty status with [First Nation]." (MB 284, p. 2)*

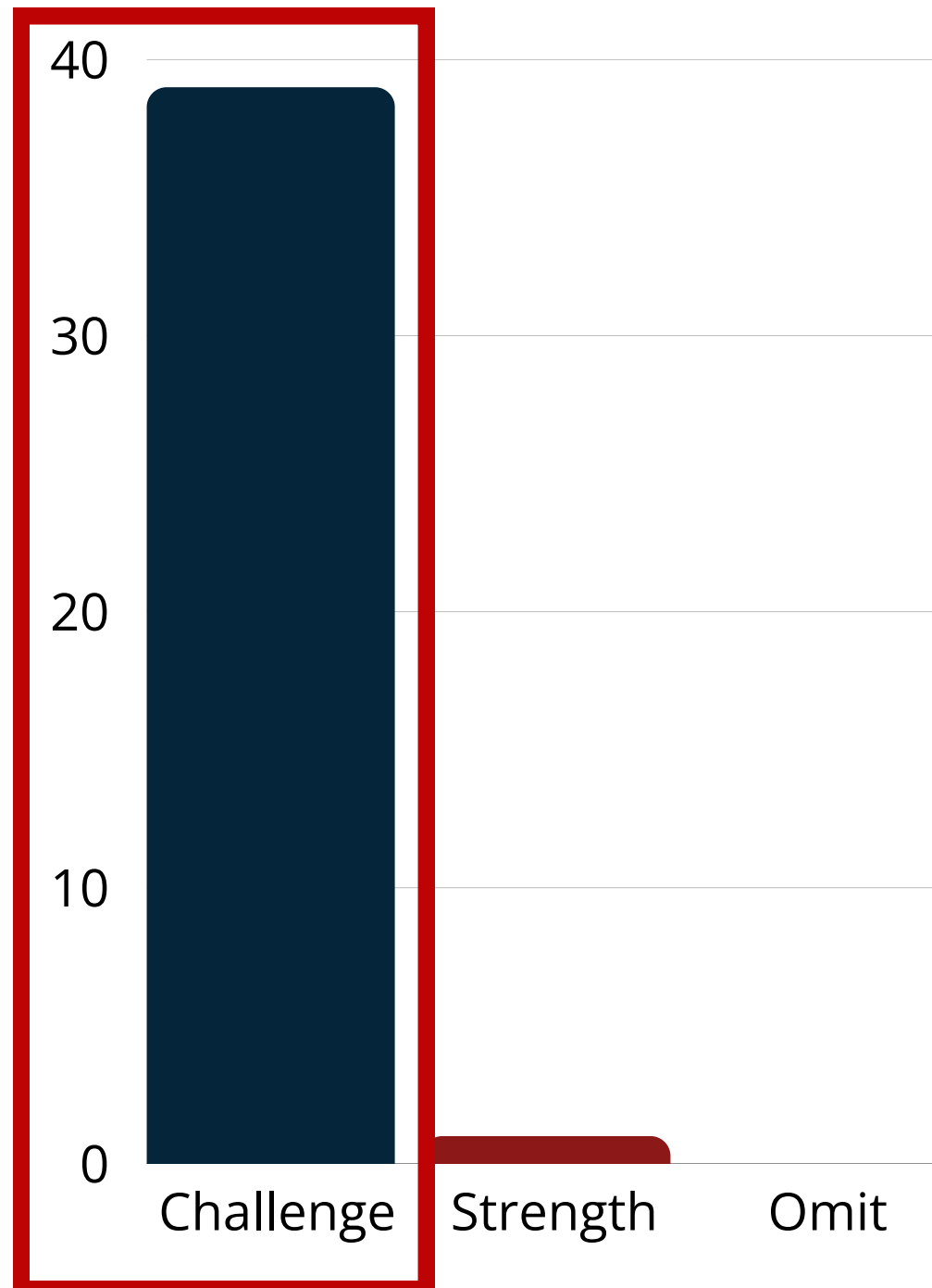
23.26%
(n = 10)

Mentioned Colonial Factors in Relation to Background or Identity

*"[Name] is keenly aware of **systemic racism**. She spoke of the many **obstacles she has faced in her life as an Aboriginal person, particularly in her interactions with the police.**" (MB 217, p. 4)*

23.3% of reports **did not** mention the individuals **FNIM identity**

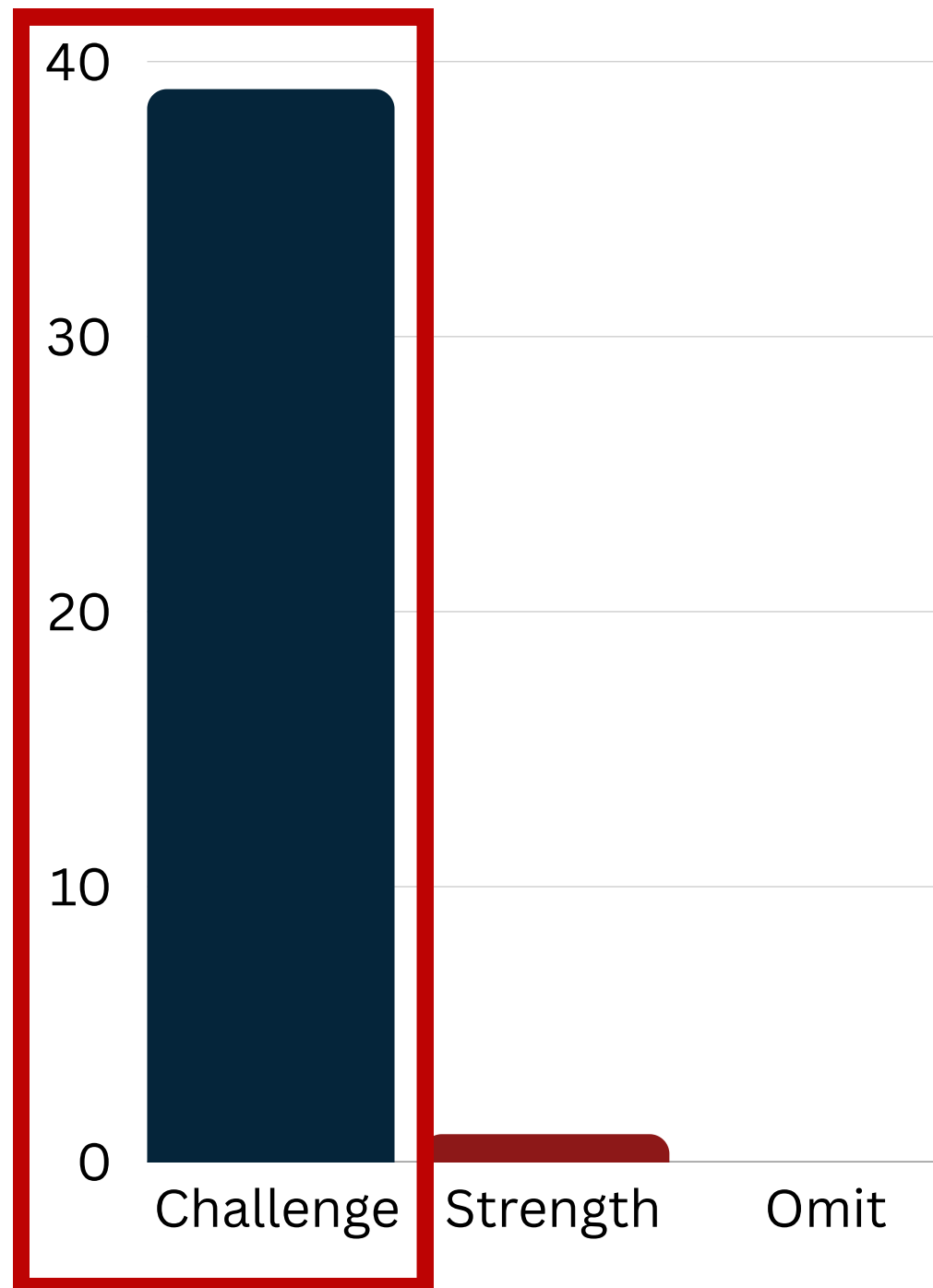
FAMILY CIRCUMSTANCES (N = 43)



“[Name] states that there is a strong family history of substance abuse. He recalls while growing up, **“everyone drank”**. He states that there were **frequent parties in his home** that would often end up with **violence**. As previously indicated, [Name] was **apprehended as a small child** due to his mother’s alcohol use.” (MB 326, p. 4)

- Reflects the impacts of intergenerational trauma and the connection between colonial factors
- No mention of colonial context

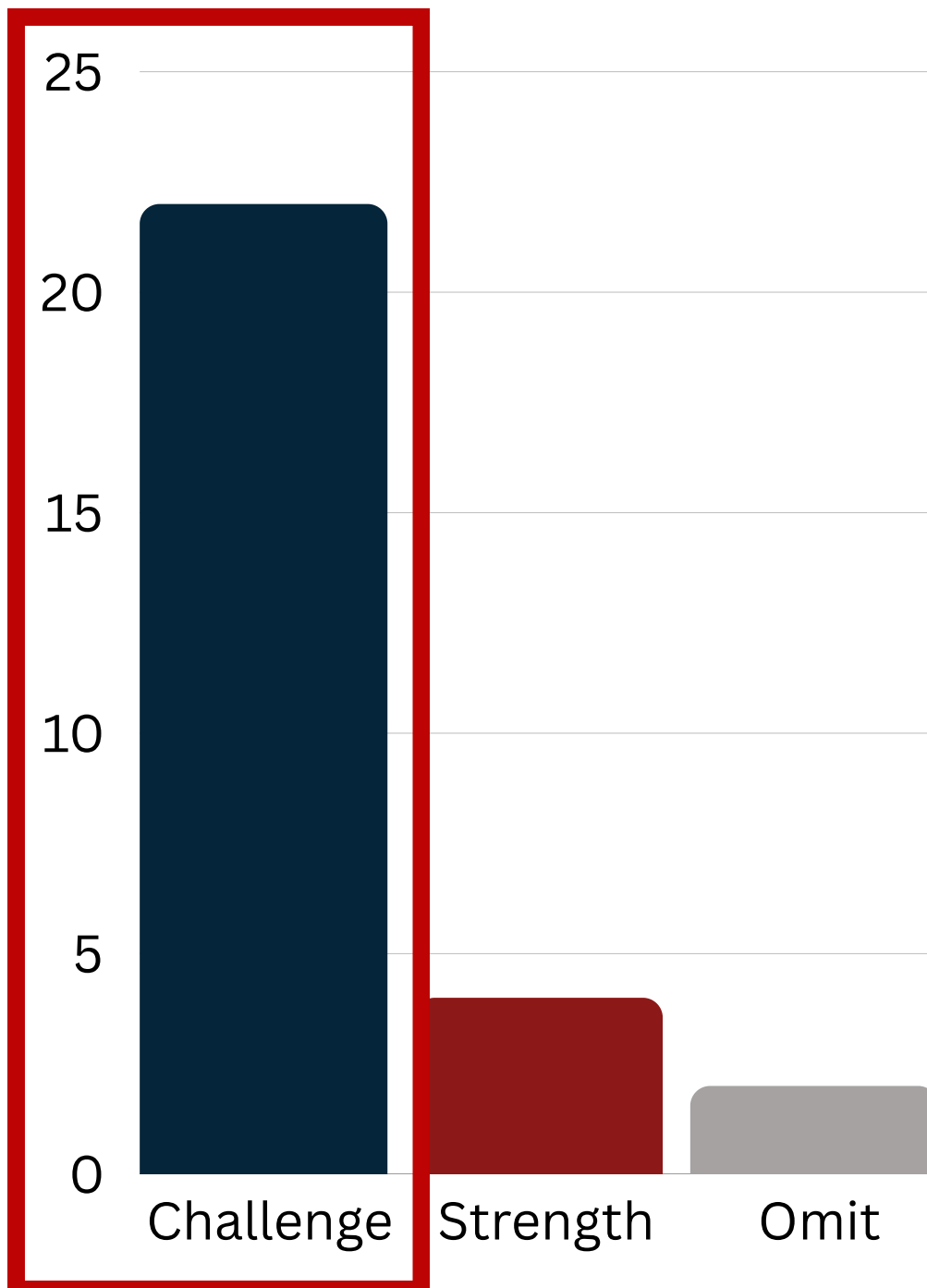
FAMILY CIRCUMSTANCES (N = 43)



“[Name] was reportedly raised by his grandmother after **his mother died when he was 1-year-old**. [Name] indicated that his **mother was murdered** and others indicate that **she froze to death** in the context of alcohol use. [Name] did not know his father.” (MB 225, p. 3)

- Lists trauma without context or discussion of impact
- Introduces ambiguity around mother’s death
- Implies freezing to death cannot be murder
 - i.e., “Starlight tours”: FNIM people were detained by police, driven outside city limits in -30°C winter conditions, and left to walk home, and many died.

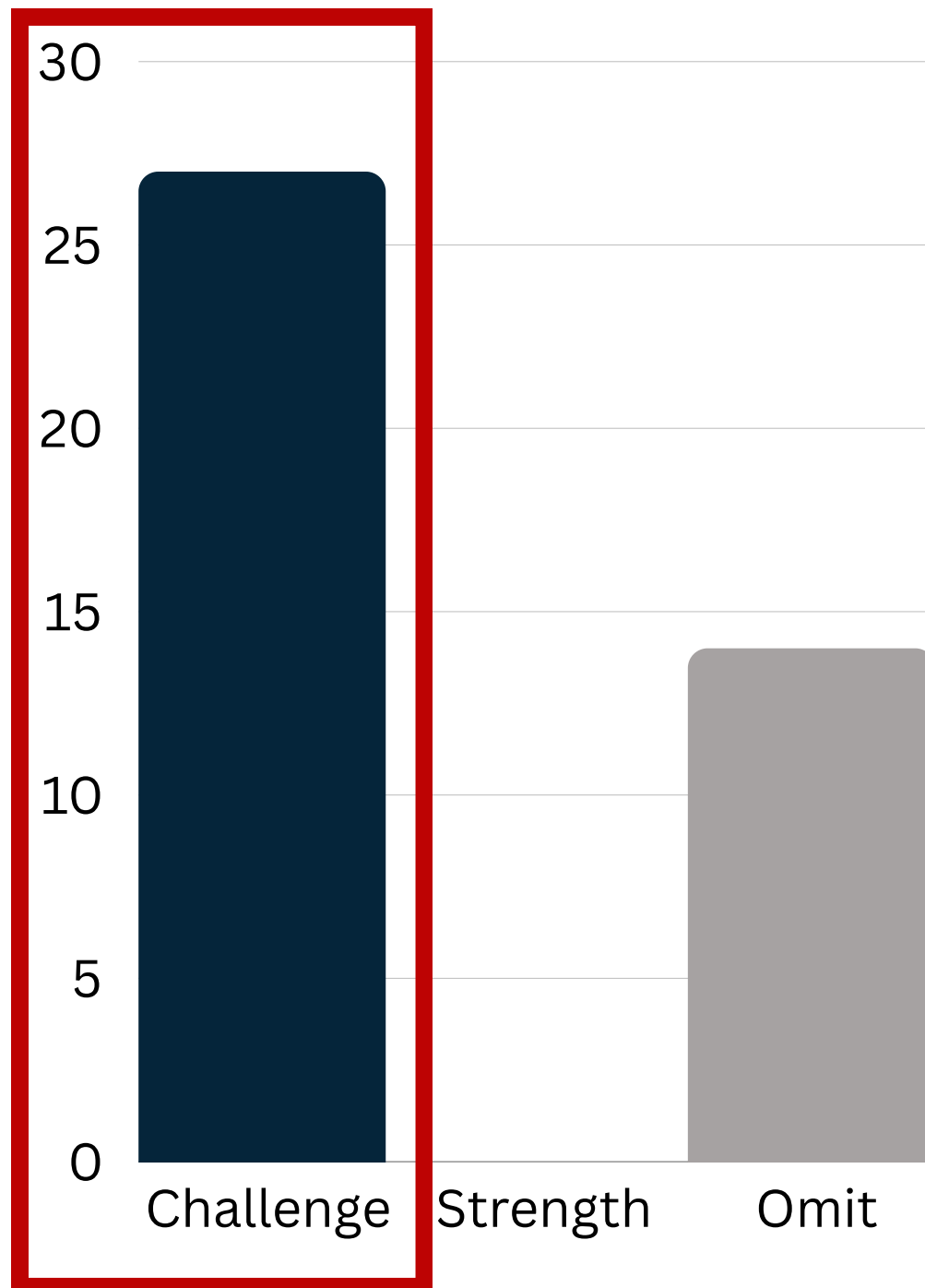
FOSTER CARE (N = 41)



“[Name] has an **extensive history of involvement with Child and Family Services**. [Name], as well as file information, indicate that this was due to his mother’s addictions to substances and alcohol. [Name] reports that **his mother was also involved with Child and Family Services**, which was further confirmed from file information.” (MB 237, p. 7)

- Overrepresentation of FNIM children in foster care
 - Mass removal of FNIM children from the 1960's-1980's (i.e., Sixties Scoop)
- Connection to substance use

POVERTY (N = 29)



“[Name] reports that he was **“poor”** growing up. He describes maintaining this **marginalized life** to present day, with a low income and **limited access to resources and affordable essential items.**” (MB 336, p. 2)

- What is not being said?
 - He is from a remote First Nation community
 - Connection between these factors and the displacement
- Connected to social and economic disparities

POVERTY (N = 43)

Background

“He has found various employment opportunities in his community doing odd jobs such as helping with youth trips, picking up garbage, mending a fence, and selling caribou meat and wood with his family.” (MB 335, p. 3)

Risk Assess.

“Of the ten historical factors considered for [Name], seven items were rated as definitely present:...history of problems with employment (**no sustained periods of employment, sold drugs in the past**),...” (MB 335, p. 7)

SAME INFORMATION, DIFFERENT INTERPRETATION

“Of the ten historical factors considered for [Name], seven items were rated as definitely present:...history of problems with employment (**no sustained periods of employment, sold drugs in the past**),...” (MB 335, p. 7)

Without context:

Unstable employment
→ increases risk rating

With context:

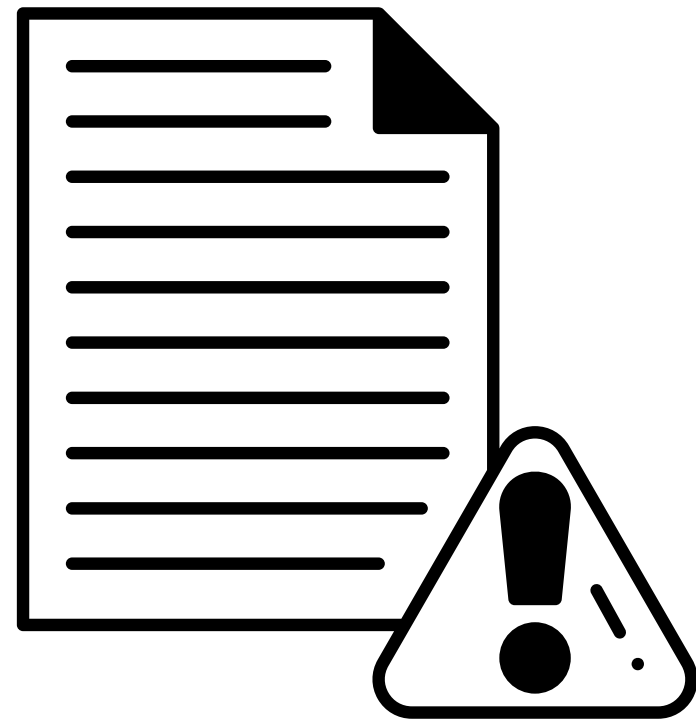
Remote community
→ limited labour market access
→ structural barriers

- Different meanings may have different implications for supporting wellness and reducing risk

(Denis-Boileau & Steininger, 2022; Layton, 2023; Meikle & Comack, 2023; Ralston, 2021)



SUMMARY OF THIS STUDY



72.7% of colonial factors, mentioned in a majority of reports, overlap with higher rated HCR-20 risk factors for FNIM



90.7% of reports did not meaningfully integrate FNIM identity or background into case conceptualization or recommendations



100% of reports omitted any mention of residential schools, colonial context either erased or pathologized

COLONIAL CONTEXT MATTERS

- Interpreting risk factors without colonial context **reinforces stereotypes of dangerousness**
- **Risk ratings** and punitive recommendations **decrease** when **colonial context** is **integrated**
- **Limited research or guidance** exists for integrating the colonial context in forensic reports



RISK FORMULATION: INTEGRATION OF COLONIAL CONTEXT

"In regards to the index offence, it is possible that she sexually assaulted the victim in an attempt to provide her with a sense of control over her own victimization or as a means to elevate her status away from being a powerless victim. **The impact of this motivating factor on B.C.W.'s behaviour may have been enhanced during her offence due to the close temporal proximity between her own sexual victimization that evening and subsequent offending.** These motivators appear to be primarily linked to her history of trauma and victimization, low self-esteem, and **symptoms of PTSD.** In B.C.W.'s case, key disinhibitors, which decreased the perceived costs of engaging in her offences, include her lack of insight and negative self-concept. **These factors are likely associated with her history of complex trauma and her recent experience of sexual assault.** As she blamed herself for her own inability to protect herself from sexual abuse and also lacked the ability to appreciate the link between her emotions, distorted cognitions, and substance use, she likely was unable to appreciate the consequences associated with her violence in the moment. **Potential destabilizers, which influenced B.C.W.'s decision-making towards engaging in violence, include her impulsivity and impaired reasoning, which likely stems from her substance use and complex trauma symptoms."**

INTEGRATING CONTEXT INTO RISK ASSESSMENT

- Courts are often left to weigh Gladue factors and risk assessments as if they are separate.
- What is missing is often how these pieces fit together:
- Questions to ask in court:
 - *What would change this risk rating?*
 - *Is this factor a product of structural conditions?*
 - *How does Gladue context alter your interpretation?*
 - *What intervention targets this specific risk pathway?*



WHAT LAWYERS AND JUDGES CAN DO WITH RISK EVIDENCE

1. Don't treat risk ratings as neutral

- Ask what is actually driving the rating (formulation!)
- Identify when structural factors are being counted as individual risk

2. Push for causal, not descriptive, risk factors (formulation!)

- What evidence links this factor to violence in this case?
- Would changing this factor actually reduce risk?

3. Require integration rather than parallel reports

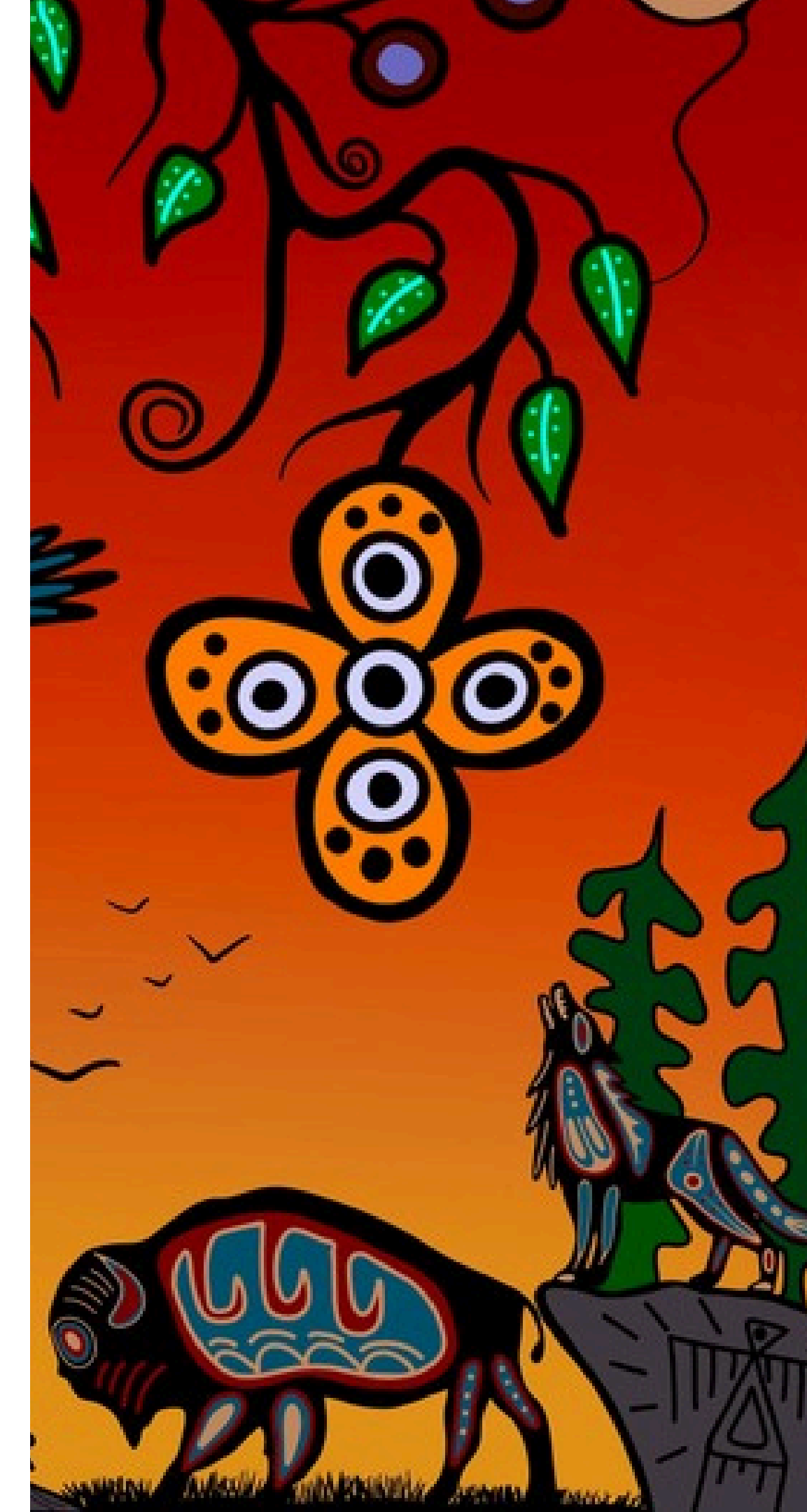
- How do Gladue factors change the meaning of identified risk factors?
- What is the combined formulation, not two separate narratives?

4. Scrutinize the use of tools

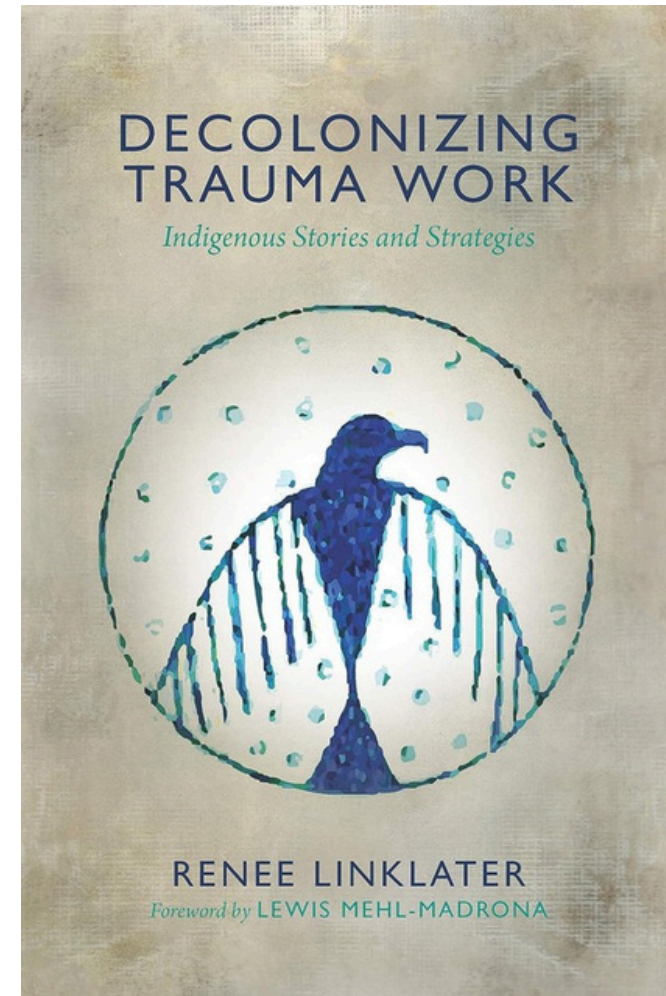
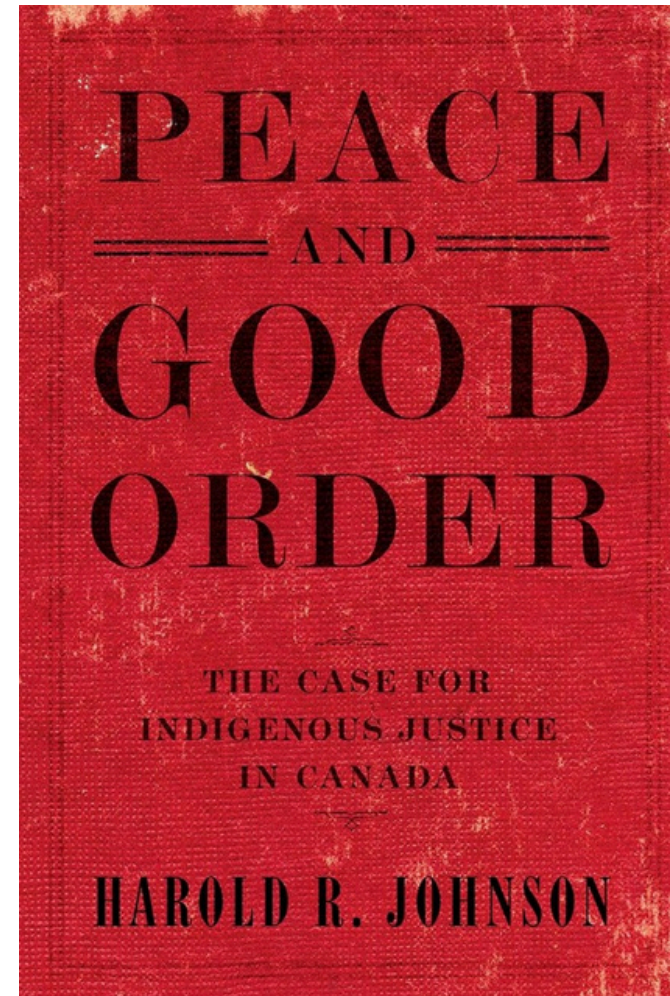
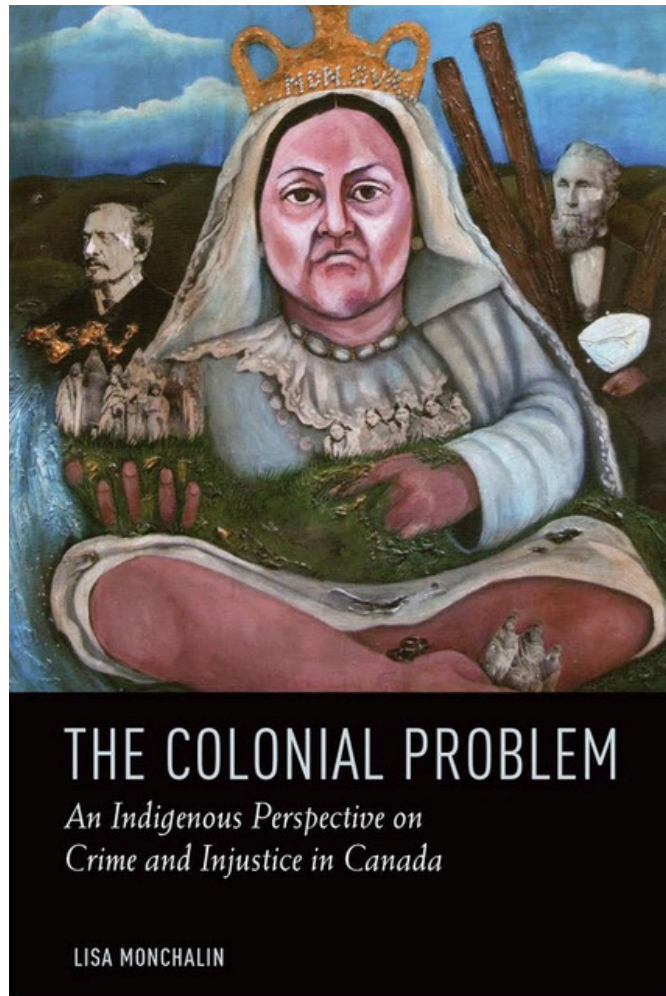
- Is the tool validated for Indigenous populations? (Ewert)
- How much weight should be given to the score vs. the formulation?

5. Look for implications for decision-making

- What interventions are proposed?
- Are they culturally and contextually appropriate?
- Do they address the drivers of risk?



RESOURCES



Muir, N. M., Viljoen, J. L., & Shepherd, S. M. (2023). Violence risk assessment tools and Indigenous peoples: Colonialism as an underlying cause of risk ratings on the SAVRY, *International Journal of Forensic Mental Health*, 22(4), 289-301. <https://doi.org/10.1080/14999013.2023.2178554>

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Thank you!



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ADDITIONAL RESOURCES SHARED DURING THE PRESENTATION



- Unsettling colonialism in the Canadian criminal justice system
 - The Colonial Problem: An Indigenous perspective on crime and injustice in Canada
 - Indigenous Peoples and the law in Canada: cases and commentary.
 - Indigenous legal issues: cases, materials, & commentary.
-
- *R v Kehoe*, 2023 BCCA 2 - Disconnect between accused and Indigenous heritage does not limit Gladue factors: BC Court of Appeal

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