

Challenging Colonial Norms and Attending to Presencing in Stories of Missing and Murdered Indigenous Women

Josephine L. Savarese

Les études sur les femmes autochtones disparues et assassinées au Canada ont mis en lumière la capacité de résistance des communautés confrontées à des pertes traumatisantes. Bien que je considère ces études, j'adopte une approche différente. J'entreprends la lourde tâche de documenter la résistance des femmes disparues et assassinées durant leur vie et au-delà. Je m'engage dans ce travail délicat en m'inspirant des travaux de Leanne Simpson publiés en 2011 : Dancing on Our Turtle's Back: Stories of Nishnaabeg Re-creation, Resurgence and a New Emergence. Dans cette publication, Leanne Simpson conceptualise la notion de « presencing » ou « invocation de la présence », qu'elle utilise pour désigner deux décès. Je fais ce travail en étudiant de près la mort, en 2013, de Kinew James, une femme autochtone détenue sous garde fédérale, et le meurtre en août 2010 d'une Albertaine de 20 ans, Amber Tuccaro. Dans son étude qualitative sur la jeunesse autochtone féminine, Sandrina de Finney encourage les chercheurs à invoquer la présence pour montrer comment les jeunes filles autochtones adoptent des stratégies anti-oppressives. En gardant à l'esprit son érudition, j'analyse des articles de presse rapportant les dernières paroles et gestes d'Amber Tuccaro et de Kinew James pour identifier leurs stratégies de résistance.

Scholarship related to missing and murdered Indigenous women in Canada has highlighted community resistance in response to traumatic losses. While sympathetic to other scholarship, I offer a different approach. I take on the challenging task of documenting resistance by missing and murdered women during and beyond their physical lifetimes. I attempt to engage in the delicate work of tracking what Leanne Simpson called “presencing” in her 2011 publication, Dancing on Our Turtle's Back: Stories of Nishnaabeg Re-creation, Resurgence and a New Emergence, in two fatalities. This is accomplished through a close examination of the death in 2013 of Kinew James, an Indigenous woman held in federal custody, and the homicide of twenty-year-old Alberta resident, Amber Tuccaro, in August 2010. In her qualitative

studies on Indigenous girlhood, Sandrina de Finney encourages scholars to take up presencing to illuminate ways in which Indigenous girls' are actively engaged in anti-oppressive strategies. With her scholarship in mind, I examine news articles that report on Amber Tuccaro's and Kinew James' last words and actions to pinpoint their resistant strategies. Finally, I draw from the work of socio-legal scholars to explore presencing as a pathway to more transformative legal inquiry.

Storytelling is an important process of visioning, imagining, critiquing the social space around us, and ultimately challenging the colonial norms fraught in our daily lives.

—Leanne Simpson¹

A momentum is building; that much is clear. The violence against Indigenous girls and women must end; *all* of our lives depend on it.

—Sherene Razack²

If I could change anything I would try to offer more . . . tools, like, to help.

—Kinew James, in an interview with Correctional Investigator of Canada, Howard Sapers³

This is the moment where world and individual, folded together, call each other into existence.

—John-David Dewsbury⁴

-
1. Leanne Simpson, *Dancing on Our Turtle's Back: Stories of Nishnaabeg Re-Creation, Resurgence, and a New Emergence* (Winnipeg: Arbeiter Ring Publishing, 2011) at 34.
 2. Sherene Razack, "Sexualized Violence and Colonialism: Reflections on the Inquiry into Missing and Murdered Indigenous Women" (2016) 28:2 *Canadian Journal of Women and the Law* 1 at 1 [emphasis in original] [Razack, "Sexualized Violence"].
 3. Howard Sapers, *Risky Business: An Investigation of the Treatment and Management of Chronic Self-Injury among Federally Sentenced Women: Final Report* (Ottawa: Office of the Correctional Investigator, 2013) at 19 <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20130930-eng.pdf>>.
 4. John-David Dewsbury, "Witnessing Space: 'Knowledge without Contemplation'" (2003) 35:11 *Environment and Planning A* 1907 at 1910.

Introduction

In this article, I respond to the call for scholarship that gives deeper consideration to ongoing Indigenous resistance and the challenges it presents to the settler state's precarious hold on Indigenous lives.⁵ I take up this call by documenting resistance by missing and murdered women during and even beyond their physical lifetimes. Specifically, I query whether attending to what followers of Leanne Simpson have called "presencing" might offer a correction to the systemic inequities that limit the ability of gendered and racialized survivors to bear witness to their loved one's experiences of victimization.⁶ To probe some of the pressing research concerns related to legal inquiry, I engage in the delicate work of tracking words and actions that coincide with presencing. Specifically, I work to illustrate Simpson's concept through the lives of two Indigenous women, thirty-five-year-old Kinew James who died at the Saskatoon-based Regional Psychiatric Centre in 2013 and twenty-year-old Amber Tuccaro, who was abducted and murdered on the outskirts of Edmonton, Alberta, in 2010. I suggest that attending to the presencing of the missing might foster space to create "a better tomorrow" for those who remain, in honour of the many disappeared.⁷

Drawing on post-colonial feminist Indigenous scholarship, and informed by texts on qualitative research methods and critical victimology, this article explores how qualitative legal inquiry might give greater credence to Indigenous resiliency or presencing when documenting historic and contemporary trauma. This investigation seems particularly urgent given that an inquiry into missing and murdered Indigenous women in Canada began its work in the fall of 2016.⁸ By the end of 2018, the inquiry is expected to generate an action plan for countering systemic violence against Indigenous women. Feminist-oriented, de-colonial scholars are monitoring the national inquiry to ensure it serves as a mechanism for change.⁹

-
5. See, for example, the call made by Sarah Buhler, "Review of *Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody* by Sherene H. Razack" (2016) 28:2 *Canadian Journal of Women and the Law* 457 at 462.
 6. Sandrina de Finney, "Under the Shadow of Empire: Indigenous Girls' Presencing as Decolonizing Force" in Claudia Mitchell & Carrie Rentschler, *Girlhood and the Politics of Place* (Oxford: Berghahn Books, 2014) 19. Simpson, *supra* note 1, stresses the importance of presence throughout her text. She states: "We are each responsible for being present in our own lives and engaged in our own realities" (at 43).
 7. Julie Kaye, "Reconciliation in the Context of Settler-Colonial Gender Violence: 'How Do We Reconcile with an Abuser?'" (2016) 53:4 *Canadian Review of Sociology* 462 at 466.
 8. Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls <<http://www.mmiwg-ffada.ca>>.
 9. Native Women's Association of Canada (NWAC), *NWAC Disappointed with Lack of Progress in National Inquiry into MMIWG*, Press Release (5 October 2016) <<https://www.nwac.ca/2016/10/press-release-nwac-disappointed-with-lack-of-progress-in-national-inquiry-into-mmiwg/>>.

Some commentators argue that legal enquiry into gendered and racialized violence may realize de-colonial aims if the tribunals convened by the dominant society are able to break away from their colonial and patriarchal foundations. These histories mean that priority is given to certain “modes of knowledge production” over other forms of investigation.¹⁰

Advocates are concerned for the family members who plan to share testimonials before the national inquiry and who want to proceed in safe, respectful, and culturally appropriate ways. This issue was raised by the over forty Indigenous women leaders, family members of murdered and disappeared women, academics, allies, and human rights experts that attended a January 2016 symposium hosted by the Native Women’s Association of Canada, the Canadian Feminist Alliance for National Action, and the *Canadian Journal of Women and the Law*.¹¹ Recommendation 7 affirms the importance of bearing witness to the experiences of, and losses by, family and community members who will give evidence through stories.¹²

Although optimistic that presencing may hold potential for positive change by affirming worthiness in de-colonial ways, I also recognize tensions that surface when encouraging mainstream institutions, like justice systems, to engage in this form of witnessing and recording traumatic loss. While acknowledging several limitations, I advance presencing as a useful support to qualitative socio-legal inquiry. To foster authentic reconciliation, the national inquiry must document both “the ongoing conditions of violence” as well as the “continued forms of resistance Indigenous women” routinely express on the “land” and in “embodied” forms.¹³ For those urging reform, a measure of the inquiry’s success will be determined by its willingness to undermine the narratives of disposability and brokenness offered by media and mainstream institutions that critical race feminists have routinely denounced.¹⁴ Finding these alternative stories often means delving into more hidden texts and forms of expression. As Julie Kaye recently pointed out, Indigenous women affirm their lives, their lands, and their cultures through “word,” in “song,” and often outside of mainstream institutions.¹⁵ The dancing

10. Juliane Collard, “Into The Archive: Vancouver’s Missing Women Commission of Inquiry” (2015) 33:5 *Environment and Planning D: Society and Space* 779 at 791.

11. Canadian Feminist Alliance for International Action & NWAC, “The National Inquiry on Murders and Disappearances of Indigenous Women and Girls: Recommendations from the Symposium on Planning for Change” (2016) 28:2 *Canadian Journal of Women and the Law* 408 at 414–15.

12. *Ibid.*

13. Kaye, *supra* note 7 at 466.

14. Yasmin Jiwani & Mary Lynn Young, “Missing and Murdered Women: Reproducing Marginality in News Discourse” (2006) 31:4 *Canadian Journal of Communication* 895. See also David Hugill, *Missing Women, Missing News: Covering Crisis in Vancouver’s Downtown Eastside* (Winnipeg: Fernwood Publications, 2010). For a more recent example, see Sherene H Razack, “Gendering Disposability” (2016) 28:2 *Canadian Journal of Women and the Law* 285.

15. Kaye, *supra* note 7 at 466.

and drumming by Indigenous communities and supporters outside the office building where the Missing Women Commission of Inquiry was held in downtown Vancouver to protest its limited scope and misrecognitions of the harm is a specific way that women have asserted presence by collectively defying a process that marginalized their stories.¹⁶

A core aim of this article is to further expose the grievability of the women's lives as a way to affirm the families and communities in their ongoing quests for acknowledgement and justice. Amber and Kinew's inability to promote change and achieve safety, irrespective of their bravery and determination, shows why advocates encourage systemic transformation, including sovereignty.¹⁷ More complete acknowledgement of the women would, at the very least, have worked against the illegibility systematically written onto the bodies of marginalized subjects, like Kinew, who suffered in her prison cell while repeatedly calling for help, and Amber, who was removed from the missing persons list by the Royal Canadian Mounted Police (RCMP) investigators even though she had already been murdered and reduced to remains by the time of their decision.

By telling stories of presencing by Indigenous women broadly defined as missing, I hope to build on the growing canon of texts that propel decolonization by honouring women's lives, even beyond their physical existence. Through illustrations from the women's stories, I seek to undermine the ways in which responsibility was imposed onto suffering bodies like the ones highlighted in this article. In the final sections, I query how legal inquiry might undermine individual blameworthiness by showcasing the sad reality that Indigenous women die even while living engaged and presenced lives. I investigate how memories of "stolen sisters," like Kinew and Amber, might be honoured through a lens that magnifies their courage along with the depth of their families' losses.

Overview: Honouring Presencing as a Push against Thoughtlessness

Theorizing with Sandrina de Finney, I suggest that presencing offers a way of more deeply appreciating girls' and women's lives because it gives credence to their "everyday engagements with hope, desire, humor, and possibility" while acknowledging the ways disadvantage and structural inequality undermine Indigenous lives.¹⁸ Importantly, it may, in the words of Sophie Tamas, "push against the

16. Collard, *supra* note 10.

17. See, for example, Jaskiran K Dhillon, "Indigenous Girls and the Violence of Settler Colonial Policing" (2015) 4:2 *Decolonization: Indigeneity, Education & Society* 1.

18. De Finney, *supra* note 6 at 22.

thoughtlessness which renders us capable of infinite evil, because we do not recognize harm.”¹⁹ Leanne Simpson’s statement that recognition for Indigenous peoples is “about presence, about profound listening and about recognizing and affirming the light in each other” suggests what scholars should look for when attempting to identify presencing.²⁰ Indigenous girlhood scholar, de Finney, has specifically taken up Simpson’s concept in her research on the life worlds of girls.²¹ In this article, I join with de Finney in her effort to honour women and girls’ creative responses to structural inequalities by affording analytical importance to their defiance of colonial norms. Giving weight to women’s agency may counter the common perspective that Indigenous lives are, according to Amber Dean, “cast as outside of a hegemonic frame for recognizing what makes us human,” thereby excusing harms to those deemed, in Judith Butler’s terminology, “unreal.”²² For de Finney, emphasizing presencing allows us to challenge the frames that construct Indigenous bodies as “insignificant, dispensable, and irrevocably broken.”²³ For de Finney, trauma is driven by environmental, political and historical factors rather than bio-medical traits organic to individual women.

Simpson also asserts that acts of presencing are part of the collective quest for resurgence and sovereignty. Drawing from Simpson, this article works to show that behaviours by Indigenous women who are now missing and murdered are more than touching and inspiring. From a presencing vantage point, they may be viewed as micro acts of sovereignty and reclamation. This is so because it can be illustrated that the women exerted some degree of governance over their lives through their seemingly ordinary decisions and actions. As a result, their behaviours often are the “subtle waves of disruption” that Simpson links to presencing.²⁴

Indigenous cultural theorist, Gerald Vizenor’s work on survivance is also helpful to this effort to explore presencing as a transformative tool. Vizenor’s lens helps to illuminate the women’s life accounts as surprising trickster stories that perform a kind of magical reversal by introducing a “discourse of presence, not absence.”²⁵

19. Sophie Tamas, “Biting the Tongue That Speaks You: (Re) Writing Survivor Narratives” (2012) 4:4 *International Review of Qualitative Research* 431 at 455.

20. Leanne Betasamosake Simpson, “The Misery of Settler Colonialism: Roundtable on Glen Coulthard’s *Red Skin, White Masks* and Audra Simpson’s *Mohawk Interruptus*”, *Leanne Simpson* (blog) (9 October 2015) <<https://www.leannesimpson.ca/writings/the-misery-of-settler-colonialism-roundtable-on-glen-coulthards-red-skin-white-masks-and-audra-simpsons-mohawk-interruptus>>.

21. De Finney, *supra* note 6 at 20.

22. Amber Dean, *Remembering Vancouver’s Disappeared Women: Settler Colonialism and the Difficulty of Inheritance* (Toronto: University of Toronto Press, 2015) at 15.

23. De Finney, *supra* note 6 at 20.

24. Simpson, *supra* note 1 at 145.

25. Gerald Vizenor, “Liberative Stories and Strategies of Survivance: Gerald Vizenor’s Trickster Hermeneutics” in Elvira Pulitano, *Toward a Native American Critical Theory* (Lincoln, NB: University of Nebraska Press, 2003) 145 at 161.

Like Simpson, Vizenor explores how Indigenous peoples promote their collective survivance, presumably even when death remains a constant specter. Vizenor argues that stories of survivance may help us to “dream back the earth” by affirming the capacity of Indigenous peoples in transformative roles that he lyrically describes as “[e]arthdivers, tricksters, shamans and poets.”²⁶

Throughout this article, I suggest ways recognizing survivance or presencing may galvanize much needed change by engaging us in the collective act of mourning. Capturing Kinew’s and Amber’s presencing may help create what Vizenor calls the “new ghost dance literature,” in reference to a dance form that emerged in the late 1800s to counter the settler onslaught in north America.²⁷ For Vizenor, Indigenous stories aimed at revival are properly viewed as “the shadow literature of liberation that enlivens tribal survivance.”²⁸ Arguably, these life accounts may serve as trickster stories that help to “liberate people’s minds.”²⁹ Summarizing the women’s presencing stories may force us into some of the “self-recognition and knowledge” that Vizenor believes is essential to survivance.³⁰ Importantly, these stories may bring awareness to communities regarding “their own power to heal.”³¹

Tracking Presencing in the Case Studies

Apart from general statements, Simpson deliberately avoids setting out precise guidelines to encourage communities to find their own meaning.³² Consequently, the task of identifying presencing is challenging. De Finney’s collaborative, participatory work with Indigenous girls provides helpful guidance, and her suggestion that researchers watch for moments when girls assert “I’m here,” despite the “daily struggle” seems particularly fitting in this study of women who worked to presence in threatening circumstances.³³ While de Finney was able to draw from qualitative interviews and arts-based research, I largely relied on mainstream news sources, including stories by the Canadian Broadcasting Corporation (CBC) and

26. *Ibid* at 145, citing Gerald Vizenor, *Earthdivers: Tribal Narratives on Mixed Descent* (Minneapolis, MN: University of Minnesota, 1981) at xvi.

27. Gerald Vizenor, “The Ruins of Representations: Shadow Survivance and the Literature of Dominance” (1993) 17:1 *American Indian Inquiry* 7, cited in Alfred Artega, *Another Tongue: Nation and Ethnicity in the Linguistic Borderlands* (Durham, NC: Duke University Press, 1994) at 163.

28. *Ibid* at 163.

29. Pulitano, *supra* note 25 at 147, in reference to comments about Gerald Vizenor’s work in Dennis Lee, “Writing in Colonial Space” (1974) 19 *Threepenny Review* 151.

30. *Ibid* at 147.

31. *Ibid*.

32. Simpson, *supra* note 1 at 25.

33. De Finney, *supra* note 6 at 31.

Global News for details about the women. These sources are the only documentation available to probe Kinew and Amber Tucarro's actions.

While the data I access is largely limited to media sources, I am inspired to continue by scholars like John-David Dewsbury. He urges us to examine the "extractions" and "remnants" because these fragments are an important way to "space out, make tangible, the way witnessing sees us move ethically beyond being 'all too human' to being open to the world as a whole."³⁴ Peering into what might otherwise be cast as "spaces of ordinariness" in the lives of Indigenous women helped to make it possible to see what Geraldine Pratt labels "the buzzing complexity of everyday life" in her qualitative work with Filipino-Canadian youths.³⁵ For Pratt, "[o]ur practices of listening bring different subjects into being, in ways that matter."³⁶

As the next sections demonstrate, some of what is revealed when Indigenous women and girls, like Kinew and Amber, are listened to is the routinization of violence in their lives and the continual demands they face to evade danger. Alongside these stories of endangerment, are accounts of creating "new possibilities for well-being, belonging, and everyday solidarities."³⁷ It is these varied and even contradictory ways of being that I attempt to document by combing through the records of Amber and Kinew's lives. The fact that the deaths were blamed on the women's so-called risky behaviour, from Kinew's unruliness in prison to Amber's decision to ride with a stranger, even years after the identification of a structurally driven crisis of violence underscores the urgent need for new ways to see and respond to the cases.

Story 1: Kinew James (1978–2013)

Investigating Kinew's case is consistent with Amnesty International's *No More Stolen Sisters*,³⁸ released in 2009 to update the 2004 *Stolen Sisters* report.³⁹ The 2009 publication describes the disproportionate numbers of Indigenous women in

34. Dewsbury, *supra* note 4 at 1908–09.

35. Geraldine Pratt, "Listening for Spaces of Ordinariness: Filipino-Canadian Youths' Transnational Lives" (2010) 8:4 *Children's Geographies* 343 at 351.

36. *Ibid* at 349.

37. De Finney, *supra* note 6 at 31.

38. Amnesty International, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence against Indigenous Women in Canada* (London: Amnesty International Publications, 2009) <<http://www.amnesty.ca/sites/amnesty/files/amr200122009en.pdf>>.

39. Amnesty International, *Stolen Sisters: Discrimination and Violence against Indigenous Women in Canada* (London: Amnesty International Publications, 2004) <<https://www.amnesty.ca/sites/amnesty/files/amr200032004enstolensisters.pdf>>.

prison as a human rights crisis. According to the report, over-incarceration is a prime way Indigenous women are “lost.” By the time of her death, Kinew had spent over fifteen years—nearly half her life—in prison.⁴⁰ More recent studies confirm the numbers of imprisoned Indigenous women are increasing. In addition, Indigenous women, like Kinew, are subjected to extremely harsh conditions while in custody, including solitary confinement, self-harming, and deaths in custody. Writing in the Australian context, Eileen Baldry and Chris Cunneen explain the over-representation of Indigenous women, like Kinew, in prison as a reflection of “colonial patriarchy.”⁴¹ The Saskatoon Regional Psychiatric Centre is a place where more inmates died from 2008 to 2013 than in any other federal prison in Canada.⁴²

Although Kinew had pre-existing health conditions, her calls for assistance on her last evening were not appropriately heeded. Other incarcerated women in nearby cells allege that guards ignored Kinew’s calls for help for around an hour, even turning off the distress alarm activated by a button in her cell.⁴³ It was reported that five distress calls came from Kinew’s cell the night she died in 2013. She ultimately died in a prison hospital apparently from a heart attack. A coroner’s inquest into Kinew’s death in custody was postponed in April 2016 due to the volume of material associated with her custodial file. Several family members have been interviewed expressing their outrage over Kinew’s untimely death. Kinew’s sister, Cheryl James, for example, has demanded more information on her sister’s death in a federal prison. Stating she was “really angry,” James made it clear she wanted to “know what it was like for [Kinew]” before she expired.⁴⁴ Kinew’s mother, Grace Campbell, has expressed her wish for an inquiry into her daughter’s death. She stated that she “wants answers.”⁴⁵ She told reporters that she needed an inquiry because she wanted “the whole truth.”⁴⁶

40. Brigitte Noël & Dave Seglins, “Prisoner Death Triggers Call for Public Inquiry”, *CBC News* (23 January 2013) <<http://www.cbc.ca/news/canada/prisoner-death-triggers-call-for-public-inquiry-1.1301336>>.

41. Eileen Baldry & Chris Cunneen, “Imprisoned Indigenous Women and the Shadow of Colonial Patriarchy” (2014) 47:2 *Australian & New Zealand Journal of Criminology* 276 at 276.

42. Anna Mehler Papern, “Canada’s Sickest Inmates Are Locked in Its Deadliest Prisons”, *Global News* (1 May 2014) <<http://globalnews.ca/news/1299648/canadas-sickest-inmates-are-locked-in-its-deadliest-prisons/>>.

43. Noël & Seglins, *supra* note 40.

44. “Family Wants Answers after Woman Dies in Saskatchewan Prison”, *CTV News* (23 January 2013) <<http://www.ctvnews.ca/canada/family-wants-answers-after-woman-dies-in-saskatchewan-prison-1.1126600>>.

45. Noël & Seglins, *supra* note 40.

46. *Ibid.*

Story 2: Amber Tuccaro (1990–2010)

Amber disappeared in August 2010. She was last seen at a hotel in Nisku, Alberta, where she overnighted with a friend and her fifteen-month-old son. She accepted a ride into Edmonton in the early evening with an unknown male. Amber's remains were found in September 2012 by horseback riders on a recreational ride. Amber's case is particularly haunting because a few minutes of a recording of her last conversation was made public during the investigation into her death. In the recording, Amber is heard questioning the driver on their whereabouts. Based on a longer version, Amber's mother, Vivian "Tootsie" Tuccaro, reported Amber became increasingly fearful during the discussion. By the end of the recording, her daughter "sounded so scared."⁴⁷

As Wendy Kubik, Carrie Bourassa, and Mary Hampton make plain, the vulnerability of women like Amber who experience pronounced violence is a product of the ongoing legacy of colonialism in Canada.⁴⁸ It is suspected that a serial killer was responsible for Amber's death. She is one of four women whose remains were located in the Leduc/Nisku area. Irrespective of whether the crimes were committed by one person, the deaths are a component of the crisis of missing and murdered Indigenous women in Canada that has been decades in the making. As commentators point out, the targeting of Indigenous women for these crimes reflects broader national patterns.⁴⁹ The fact that all of the remains found in the Leduc area were Indigenous women is consistent with the findings that victims of violence are racialized. In an interview, a representative of the Alberta-based Stolen Sisters and Brothers Awareness Movement asked whether the four women from the Leduc area, including Amber Tuccaro, would still be alive if they were not visibly Indigenous. The CBC's Aboriginal Unit discovered at least fifteen unsolved cases of Indigenous women who vanished or were murdered in and around the Edmonton area.⁵⁰ The partial remains of four of those women, including Amber, were located within a few kilometres of each other in Leduc County.⁵¹

Her positive qualities described by her family were not safeguards against violations and the indifference shown by law enforcement. Tuccaro reported that when

47. Marnie Luke & Connie Walker, "Amber Tuccaro's Unsolved Murder: Do You Recognize This Voice?", *CBC News* (8 June 2015) <<http://www.cbc.ca/news/indigenous/amber-tuccaro-s-unsolved-murder-do-you-recognize-this-voice-1.3102635>>.

48. Wendy Kubik, Carrie Bourassa & Mary Hampton, "Stolen Sisters, Second Class Citizens, Poor Health: The Legacy of Colonization in Canada" (2009) 33:1–2 *Humanity & Society* 18 at 19.

49. Brandi Morin, "Police Probe Possibility Lone Killer Dumping Bodies outside Small Alberta Town", *APTN National News* (1 May 2015) <<http://aptnnews.ca/2015/05/01/police-probe-possibility-lone-killer-dumping-bodies-outside-small-alberta-town/>>.

50. Luke & Walker, *supra* note 47.

51. *Ibid.*

she informed law enforcement that Amber was missing, the Leduc RCMP officers suggested Amber was likely “partying.”⁵² They claimed she would eventually call home.⁵³ A media relations officer with Leduc RCMP even claimed there was no “reason to believe [Amber was in] any danger.”⁵⁴ Because the family was poor and Indigenous, it seems that Amber’s disappearance was characterized as resulting from her choice rather than from foul play. Denying the family’s worry, the constable further stated that it was known Amber was in the Edmonton area.⁵⁵ Sadly, Amber had been murdered in the remote location where her remains were discovered.

Amber’s family has been outspoken against the characterization of their daughter and loved one as disposable. Her parents launched a lawsuit in 2014 to challenge the handling of the case by law enforcement. Although Amber’s whereabouts were still unknown, she was taken off the missing persons list, and her personal items seized from the Nisku Inn were destroyed. The family worries that vital clues were eliminated because this evidence was not retained. The fact that law enforcement claimed Amber was seen in Edmonton at a time when she was already deceased seems to show that she was viewed as indistinguishable from other Indigenous women. Her unique personhood was symbolically and practically erased.⁵⁶

For the last six years, her family has worked to make Amber’s disappearance a law enforcement priority. Tuccaro particularly recognizes how important her advocacy is in the struggle for justice for her daughter. For her, Amber’s case has become one that is “about man’s voice” due to the recording.⁵⁷ The unknown assailant’s voice echoes in her mind on a daily basis. Tuccaro knows that she is “Amber’s voice.” In an interview with the CBC, Amber’s mother, Tuccaro, stated she wanted “accountability”⁵⁸ and some “justice for her daughter.”⁵⁹ She worried

52. *Ibid.*

53. *Ibid.*

54. *Ibid.*

55. *Ibid.*

56. See, for example, Sherene H Razack, “Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George” (2000) 15:2 Canadian Journal of Law and Society 91 at 121 [Razack, “Gendered Racial Violence”] for the discussion of how two young men convicted of manslaughter for the death of Pamela George failed to recognize a street-based sex worker, Charlene Rosebluff, thereby approaching her three times for sexual services on the same night. According to Razack, the men saw Indigenous women in discriminatory ways and likely could not tell one Indigenous woman from another.

57. Luke & Walker, *supra* note 47.

58. “Vivian Tuccaro Talks With Trail’s End’s Allison Devereaux”, *CBC News* (24 April 2014) <<http://www.cbc.ca/news/vivian-tuccaro-talks-with-trail-s-end-s-allison-devereaux-1.2621224>> at 08:23.

59. *Ibid* at 08:28.

Amber was treated by local enforcement as though she were “nothing.”⁶⁰ While the RCMP subsequently intensified their investigative efforts, Amber’s killer has not been found.

Claiming Power in the Face of Ongoing Colonial Violence

De Finney’s collaborative research models ways to isolate the women’s strategies to claim power in the face of ongoing colonial violence(s). Her qualitative study provides indicators of what researchers interested in presencing should look for when analyzing media and/or law. Women and girl’s lived navigation of multiple violences that are simultaneously “epistemic,” “ontological,” “territorial,” “geographic,” “spatial” as well as “embodied/ material, affective, cognitive, and spiritual” are important to identify.⁶¹ An aspect of Indigenous lives that de Finney asks researchers to acknowledge is the persistence of colonial-inspired violence. Her interview participants acknowledged the danger that was ever-present in their worlds. A participant, Cindy, asked “how loud” Indigenous women “[had] to yell” to bring attention to the fact that “there’s a lot of violence” against racialized women and girls.⁶²

Many of the Indigenous women, like Kinew, who are over-incarcerated in Canada’s prison system, have the prior histories of victimization by violence that Cindy urges us to recognize. Following James’s death, it was reported that her parents were residential school survivors. James was abandoned as a young child. She suffered sexual, physical, and mental abuse growing up and spent most of her life in the child welfare and criminal justice systems. James was classified as a maximum security inmate. She spent long portions of her sentence in segregation units.⁶³ Even while facing considerable hardship, Kinew remained optimistic her circumstances would change. In a May 2011 court appearance in Kitchener, Ontario, Kinew dismissed a judge’s attempts to compare her to the deceased teenager, Ashley Smith.⁶⁴ According to the Waterloo Region’s *Record*, Kinew replied: “I’m not Ashley Smith.”⁶⁵ She continued by stating: “I have a lot more strength than she

60. *Ibid* at 08:42.

61. De Finney, *supra* note 6 at 20.

62. *Ibid* at 19.

63. “Kinew James Inquest Delayed”, *CTV News Saskatoon* (25 April 2016) <<http://saskatoon.ctvnews.ca/kinew-james-inquest-delayed-1.2874716>>.

64. Kim Mackrael, “Dead Inmate in Saskatoon Spoke of Ashley Smith”, *Globe and Mail* (23 January 2013) <<http://www.theglobeandmail.com/news/politics/dead-inmate-in-saskatoon-spoke-of-ashley-smith/article7742724/>>. As most readers will be aware, Smith died in prison from asphyxia, while guards stood by under orders not to immediately intervene when she applied ligatures to her neck.

65. *Ibid*.

did.”⁶⁶ As evidence, James cited her completion of Grade 12. She said she wanted out of jail. She concluded by stating: “I know I will get out.”⁶⁷

A presencing standpoint helps us see how these women acted in ways that were “transformative and revolutionary” even though not lifesaving.⁶⁸ Because these qualities are harder to track in Amber’s young life, details about Kinew’s role as a change maker are discussed. It is reported that James was one of the prisoner’s housed at the Grand Valley Institution for Women who came forward with allegations that a male guard was bringing drugs into the institution and exchanging them for sexual favours from at least one female inmate. She was voluntarily transferred to the psychiatric institution in Saskatoon about one week after the CBC made the disclosures public.⁶⁹ The Canadian Association of Elizabeth Fry Societies (CAEFS) and the prison ombudsman, Howard Sapers, were involved in the investigation into the claims that were ultimately determined unfounded. After her death, Kim Pate of the CAEFS described James as “an incredibly principled, strong-willed and determined young woman.”⁷⁰ A fellow inmate and friend, Nyki Kish, wrote a tribute to Kinew after she died. Kish attributed Kinew with teaching her about the prison system. Importantly, she also learned from Kinew about the “resilient struggle of human beings to remain true to their values, even in the face of intense coercion.”⁷¹

Amber seems to have experienced the ever present threat of violence through her mother’s constant worry. Vivian Tuccaro cautioned her daughter against hitchhiking and “[going] with strangers”; she warned Amber to always have her cell phone with her and to pretend she was talking to someone to discourage predators.⁷² Ironically, at the time of Amber’s death, she was following her mother’s advice. During her last drive, Amber phoned her brother who was incarcerated in the Edmonton Remand Centre. Because outgoing calls are recorded, the audio version of the call eventually surfaced as part of the evidence. In the audio recording released by the RCMP, Amber is heard courageously telling her abductor: “You’d better not be taking me anywhere I don’t want to go.”⁷³ During the clip, Amber

66. *Ibid.*

67. *Ibid.*

68. Simpson, *supra* note 1 at 24.

69. Dave Seglins and Brigitte Noël, “Prisoner death sparks new allegations of guard neglect” CBC News (23 January 2013) <<http://www.cbc.ca/news/canada/prisoner-death-sparks-new-allegations-of-guard-neglect-1.1301339>>.

70. Quoted in Laura Stone, “Inmate Interviewed in Self-Harm Prison Investigation Demanded to Be Named”, *Global News* (1 October 2013) <<http://globalnews.ca/news/875030/almost-unheard-of-inmate-refused-to-talk-to-investigators-unless-she-was-named/>>.

71. Nyki Kish, “My Friend Kinew James”, *MacLean’s* (8 April 2016) <<http://www.macleans.ca/news/canada/my-friend-kinew-james/>>.

72. Luke & Walker, *supra* note 47.

73. *Ibid.*

questions the man presumed to be her killer, attempting to force him to disclose their whereabouts. This audio file is one of the most important pieces of evidence regarding Amber's unresolved death.

The research participants in de Finney's qualitative study reported that they were acutely aware of the continual threat of violence shaping their lives. Their comments and de Finney's analysis helps theorize these patterns in Kinew's and Amber's lives and actions. De Finney urges scholars who want to work in decolonial ways, guided by presencing, to magnify ways that Indigenous girls and women "bravely and creatively" navigate the colonial traumas that "seep into bodies, spirits, relations, structures, systems, and places."⁷⁴ Women and girls often exhibit their value through less noticeable means that are outside of neo-liberal, settler feminist expectations.

In previous passages, Kinew was praised for her service as a whistle blower, a prison-based advocate, and a friend to women on the inside. Amber was recognized for her courageous attempts to forestall violations by calling her brother during a dangerous ride with a predator. The driver's audacity even while being recorded seems to show the expectation of impunity that guides predators. These behind-the-scenes, quiet acts are consistent with Simpson's descriptions of presencing, albeit in more heartbreaking ways than those in her writing. While Kinew James and Amber Tuccaro experienced "isolation, shame, anger and silencing" they also manifested tremendous presence in their short lives.⁷⁵

Attending to presencing moves the analysis beyond former efforts to "humanize" marginalized women that researchers faulted because it normalized aspects of disappeared women's lives in accordance with mainstream imperatives.⁷⁶ In contrast, presencing attributes social, political, and historical astuteness to Indigenous women and girl's interpretations and daily actions. One way this can be illustrated in relation to Amber is her mother's description of her as a "tough girl" who could "take care of herself."⁷⁷ Amber would not, Vivian Tuccaro stated, "just let anybody do anything to her, without a fight or whatever."⁷⁸ As the case overviews show, the women's positive qualities were not safeguards against violations and indifference. Irrespective of their strong spirits and creative energies, Amber and Kinew were unable to overcome the systemic, colonial-inspired inequalities that positioned them for violence and death. Their stories underscore the importance of structural reform.

74. De Finney, *supra* note 6 at 20.

75. Sandrina de Finney, "Playing Indian and Other Settler Stories: Disrupting Western Narratives of Indigenous Girlhood" (2015) 29:2 *Continuum* 169 at 177.

76. See the discussion in Susan Strega et al, "Never Innocent Victims: Street Sex Workers in Canadian Print Media" (2014) 20:1 *Violence Against Women* 6.

77. Luke & Walker, *supra* note 47.

78. *Ibid.*

Being Relational

One of the themes that emerges from the women's stories is the ways that both were relational. While a residential survivor and self-admitted alcoholic, Grace Campbell maintained contact with Kinew in prison and regularly told her daughter how much she anticipated her return home. Campbell described her daughter as an "ambitious" and "spiritual" person.⁷⁹ She was taking correspondence courses and planning for her release. Her goal was to study law. Her mother reported Kinew "talked a lot about school, school, school, university."⁸⁰ In pictures on the Internet, Kinew is featured in a black graduation gown standing arm in arm with Kim Pate, presumably taken in honour of her high school graduation. Both appear relaxed, they are smiling in the way often described as beaming. Kinew's friend on the inside, Nyki Kish, also experienced joyful times with Kinew. Kish noted that she liked to laugh with Kinew. She recalls Kinew's penchant for giving small presents like artwork and jeans. Because Kinew was connected to Indigenous culture, she liked to model "gifting as a practice to demonstrate love and respect."⁸¹ Because this practice defied institutional policy, Kinew would often re-appear to apologetically reclaim the gift.

The evidence of Amber's connections to family and friends are more scant than the details regarding Kinew, given the focus on the ongoing investigation into Amber's death. At the same time, it is clear that Amber and her mother maintained a special bond. Tuccaro reports that she was in regular contact with her daughter after she departed for Nisku. In fact, she urged Amber not to leave their home. Amber insisted it would only be for "two sleeps."⁸² Tuccaro knew Amber was in harm's way because she failed to maintain contact with her "number one priority," her son Jacob.⁸³ Amber lived to be a mom, according to Tuccaro. An aspect of her character that Tuccaro appreciated was Amber's humour. Amber's mother recalled that Amber was known for making people laugh. Her efforts were sincere and "right from the heart."⁸⁴

The women's relational ways of being in the world seemed to have opened up possibilities for interconnectedness, described by de Finney as being vital to existence.⁸⁵ The fact that these moments are commemorated by family and friends

79. Brigitte Noël and Dave Seglins, *supra* note 40.

80. *Ibid.*

81. Kish, *supra* note 72.

82. Luke & Walker, *supra* note 47.

83. Tiar Wilson, "Fort Chip Community Honours Amber Tuccaro's Life", *CBC News* (17 January 2015) <<http://www.cbc.ca/news/indigenous/fort-chip-community-honours-amber-tuccaro-s-life-1.2912801>>.

84. *Ibid.*

85. De Finney, *supra* note 6 at 31.

shows their importance as presencing strategies, however fragmented and short-changed. The testimonies that followed the women's deaths showed their lives as grievable. Vivian Tuccaro poignantly expressed the ongoing hurt. She stated: "There are no words to describe the pain our family feels since Amber's disappearance. We are not complete without Amber."⁸⁶ The second annual Amber Alyssa Tuccaro Memorial Round Dance took place in January 2015 in Fort Chipewyan in northern Alberta.⁸⁷ The community's effort to keep Amber's story alive is one of the many testimonials that might increase the capacity of systems to acknowledge Indigenous women's lives as worthy ones capable of generating grief. Changes seem more likely if the lives that bravely confronted colonial horror are affirmed along with the experience of profound loss by their loved ones. Vivian Tuccaro reports, for example, that she misses Amber "every day, all the time."⁸⁸

Having a Name: Kinew James—Ke-She-Ba-Nodin-Nuke-Kinew

For the families of Indigenous women who are victimized by violence, there is an insistence that their loved ones have a name. The response to Cindy Gladue's death is a moving example. On 22 June 2011, Cindy Gladue bled to death in a hotel room bathroom due to deep incisions to her vagina. The alleged offender, Bradley Barton, was acquitted of the homicide by a jury. The case is also infamous because Gladue's vagina was extracted from her body and introduced as evidence during the trial. Her loved ones wanted Canadians to understand that Gladue was more than "a statistic," more than "an addict," and more than "a piece of tissue" in reference to the ways an intimate body part was used as evidence during the trial.⁸⁹ Her mother, Donna McLeod, asserted: "She's still human."⁹⁰ Gladue was, she stated, still someone with "a name."⁹¹

During her lifetime, Kinew seems to intuitively recognize the importance of having a name. She was, for example, the only woman interviewed in a study on

86. Canadian Press, "Amber Tuccaro, Missing Woman's Voice Recording Released By Alberta RCMP", *Huffington Post* (28 August 2012) <http://www.huffingtonpost.ca/2012/08/28/amber-tuccaro-missing-woman-voice-recording-released-by-alberta-rcmp_n_1837527.html>.

87. Wilson, *supra* note 83.

88. Luke & Walker, *supra* note 47; "Amber Tuccaro's Unresolved Murder", *CBC News* (17 January 2015) at 51:00–54:00 <<http://www.cbc.ca/news/indigenous/fort-chip-community-honours-amber-tuccaro-s-life-1.2912801>>.

89. Kathryn Blaze Baum, "More Than a Tragic Headline: Cindy Gladue Dreamt of a Happy Life", *Globe and Mail* (15 May 2015) <<http://www.theglobeandmail.com/news/national/the-death-and-life-of-cindy-gladue/article24455472/>>.

90. *Ibid.*

91. *Ibid.*

self-harming by incarcerated women that asked to be identified by name. In her interview, she urged prison officials to provide more help to the women, suggesting that disincentives, even chocolate bars, were important to discourage self-harming. She encouraged “more counselling,” “more intervention,” and “more stuff from DBT (dialectical behaviour therapy),” particularly for the younger inmates who were only starting to self-injure and who could avoid “[ending] up with . . . a whole bunch of scars.”⁹² In her concern for others, Kinew seemed to live up to the nobility in her name. Her mother explained to reporters that Kinew meant “eagle.”⁹³ In keeping with the significance of referring to the lost women by name, Kinew’s full name, Ke-She-Ba-Nodin-Nuke-Kinew, seems important. Campbell explained it translated to “Eagle in the Whirlwind.”⁹⁴

The quality of naming that Kinew’s mother seems to have intuitively known was important corresponds with Simpson’s ideas on the illusive ways Indigenous peoples assert their value. The family’s decision to afford Kinew an impressive name on her birth appears to be an effort to inscribe her as human and to bring a world into existence, to ensure that her humanity matters. In the words of La Paperson, by reminding us of Kinew’s name, the James’s family commands us to remember “the forms of being,” like Kinew, that are “erased by power” yet “are there nonetheless.”⁹⁵ This statement also seems relevant to Amber. To aid the homicide investigation, billboards bearing her picture and name have been posted near her home in Alberta.⁹⁶ Her mother remembers that Amber promised to be a “big star” who would be featured on billboards because she liked to sing.⁹⁷ For her family, it is ironic that Amber reached fame through her death.

Exploring Socio-Legal Reform: A Survey of Prior Studies

In this section, I show how my analysis of the cases fits into, or departs from, the existing literature on legal investigations into missing and murdered Indigenous women, including trials and inquiries. While critical of former hearings, the studies cited also suggest pathways towards fairer procedures. They are helpful in imagining a more successful legal inquiry—one that gives authority to Indigenous women

92. Stone, *supra* note 70.

93. *Ibid.*

94. *Ibid.*

95. La Paperson, “The Postcolonial Ghetto: Seeing Her Shape and His Hand” (2010) 1:1 Berkeley Review of Education 5 at 7.

96. “Billboards Seek Tips in Unsolved Death of Amber Tuccaro”, *CBC News* (12 November 2013) <<http://www.cbc.ca/news/canada/edmonton/billboards-see-tips-in-unsolved-death-of-amber-tuccaro-1.2424417>>.

97. *Ibid.*

and communities, one that brings recognition to the many layers of colonial power that extinguish and curtail Indigenous presencing, and one that comprehensively surveys mainstream institutions—from education, to child welfare, to law enforcement—in order to uncover the depth of systemic discrimination.

Based on her critical examination of the prosecution of well-known serial murderer, Robert Pickton, Elaine Craig argues that radical changes are required if justice systems are to “recognize and respond to the social indicators of crime and vulnerability.”⁹⁸ By acknowledging women’s strengths alongside their vulnerability, the national inquiry might reshape the legal norms Craig and others criticize. It might serve as a model for other qualitative legal investigations, including those conducted by the police, the courts, and other forms of inquiry, such as a coroner’s inquest. To move away from the damage-centred focus that denies victims their “citizenship and humanity,” future inquiries might challenge the view that Indigenous passivity is a risk factor that fuels the over-experience of violence.⁹⁹

In her scholarship, de Finney issues an urgent call to researchers to challenge stereotypical depictions of Indigenous girlhood.¹⁰⁰ She asks that we heed the request from her research participants to “wait a minute, take another look.”¹⁰¹ By closely scrutinizing the public records of their behaviour and last conversations, it became possible to find evidence that Amber and Kinew engaged in important feats of de-colonialism made visible by Simpson’s presencing lens. Presencing is embraced here because “political transformation” through witnessing can result in the realization that “the act of public testimony transforms those who witness such testimony.”¹⁰²

Sharing the Truth, Honouring Voices of Resistance

In “Reconciliation in the Context of Settler-Colonial Gender Violence: ‘How Do We Reconcile with an Abuser?’” Julie Kaye queries whether reconciliation is possible given the continuation of colonial gender violence.¹⁰³ As a starting point, Kaye advocates for the disruption of the master Canadian narrative that emphasizes tolerance and benevolence while masking structural and practical forms of control. Kaye suggests that greater transformation of these power dynamics might result

98. Elaine Craig, “Person(s) of Interest and Missing Women: Legal Abandonment in the Downtown Eastside” (2014) 60:1 McGill Journal of Law 1 at 37.

99. *Ibid* at 7.

100. De Finney, *supra* note 6 at 20.

101. *Ibid*.

102. Geraldine Pratt, “Abandoned Women and Spaces of the Exception” (2005) 37:5 Antipode 1052 at 1072–73.

103. Kaye, *supra* note 7 at 461.

if the structural violence that underpins Indigenous vulnerability were more fully acknowledged by the settler states and its agencies.

The colonial rationalities that justified the displacement of Indigenous peoples from their lands and forms of governance deserve challenge. This disruption is a necessary starting point for better relations between colonial states and Indigenous communities. These ruling logics justify contemporary forms of violence, including violence towards women. This was demonstrated during a trial regarding the death of Edmonton resident, Cindy Gladue. Gladue's story is an extreme example of racism and oppression, yet it showcases tendencies that are commonplace. In response, Kaye calls for an anti-colonial sociology that supports "processes of truth and possibilities of reconciliation" by giving credence to "the truths and voices of people" who are "living and resisting colonial state violence."¹⁰⁴

Kaye's socio-legal and social science research leaves me more inspired to probe the ways in which even mainstream legal systems could adopt her more critical approach. Kaye's call for a "critically reflexive examination" of the ways the social sciences aid "the reproduction of colonial systems of domination" seems applicable to other settings.¹⁰⁵ While the challenges are manifold in shifting dominant society institutions, the sociological framework Kaye sets out provides guidance on the ways to promote sovereignty. That Kaye expresses at least some hope that critically engaged researchers might develop "alternate, non-oppressive ways of being in relation" provides impetus for this investigation.¹⁰⁶ Arguably, engaging with presencing offers a method for rethinking and rewriting stories that may present the fuller picture necessary to drive change. The question that remains open is the level of uptake there will be to Kaye's challenge. It is hoped that the extensive evidence of gendered harm propels researchers and even professionals to take up the call to rigorously address the root causes of violence.

Destabilizing Colonial Truths

Prominent critical race and de-colonial scholar, Sherene H. Razack, reached comparable discouraging conclusions on the embeddedness of colonialism in Canada's justice system nearly two decades ago in her analysis of the prosecution for the murder of Regina resident, Pamela George. Razack's work is often cited as groundbreaking in showcasing law's unfairness in relation to murdered Indigenous women.¹⁰⁷ The judge who presided over the trial reminded the jury that George was a "prostitute," implying that she was culpable for the physical and sexual assaults. In a 2015 study, Razack pondered several atrocities including the death

104. *Ibid* at 466.

105. *Ibid*.

106. *Ibid*.

107. Razack, "Gendered Racial Violence", *supra* note 56.

of an Indigenous prisoner, Kinew James. Razack encouraged us to remember that the “human body is continuously made to bear the imprint of power, the marking of flesh that law considers legitimate.”¹⁰⁸ Razack’s recent study, *Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody*, presents similar findings on inquiries and inquests into premature Indigenous deaths in state custody.¹⁰⁹

More recently, Razack joined with family members, advocates, and scholars to contemplate the potential of the national inquiry into missing and murdered Indigenous women to reverse the failings by legal institutions that she and others have extensively documented. In her summary to a special issue of the *Canadian Journal of Women and the Law*, Razack stressed the need for the inquiry on murdered women to go beyond the customary production of “colonial truths” that authorize, rather than prevent, brutality by emphasizing Indigenous dysfunction.¹¹⁰ Of further note, Razack recommended that supporters avoid both “unthinking pessimism” and “unrestrained optimism” regarding the national public inquiry.¹¹¹ By proposing this balance, Razack seems to imagine the national inquiry as a potential site for Indigenous reclamation. To avoid constrained narratives of colonial benevolence, family and community testimony must play a significant role. As a result, it seems important to envision ways to indigenize the storytelling process.

While the language differs, Razack’s concern bolsters this examination of ways that presencing might address some of the procedural shortcomings of socio-legal inquiries into cases of missing and murdered Indigenous women. For Simpson, this mode of inquiry has the potential to expose the complexity of Indigenous truths outside simplistic narratives of reconciliation. Simpson argues that Indigenous demands for land and resources are pathways to securing respect and the just treatment of Indigenous women. Simpson privileges processes that are “grounding” while also functioning in ways that are “transformative” and “decolonizing.”¹¹² Drawing from Razack and Simpson, presencing seems to hold promise as a tool for better analyzing the life worlds of Indigenous women with the aim of shifting power.

Examining Moments Where Power Might Start to Shift

A concern that has arisen in each of the studies summarized is the minimization of Indigenous perspectives by mainstream legal systems and truth-seeking fora.

108. Sherene H Razack, “Racial Terror: Torture and Three Teenagers in Prison” (2014) 13:1 *Borderlands* 1 at 19.

109. Buhler, *supra* note 5. Sherene H Razack, *Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody* (Toronto: University of Toronto Press, 2015).

110. Razack, “Sexualized Violence”, *supra* note 2 at 4.

111. *Ibid* at 3.

112. De Finney, *supra* note 6 at 22.

Juliane Collard's exploration into the British Columbia Missing Women Commission of Inquiry is particularly informative on this point. In her 2015 text, *Into the Archive*, Collard documented ways that women with experiential knowledge of sex work were marginalized and virtually excluded from the proceedings.¹¹³ While the inquiry allowed for some level of cultural appropriateness through opening ceremonies by Elders, these rites were only briefly alluded to in the transcripts as "TRADITIONAL OPENING CEREMONY."¹¹⁴ For Collard, this was one means by which the inquiry cleansed the more gritty components from the record, namely "sounds, scars, shouts, screams, enacted sayings, gestures, and ritualized performances of witnesses," thereby limiting it as a forum to realize justice.¹¹⁵ Collard argues that the missing women inquiry denied the "complex, unique, and multiple memories and experiences" of Indigenous women.¹¹⁶ She concludes that Vancouver's Missing Women Commission of Inquiry reproduced colonial silences through various mechanisms, including the choice of location for the hearing, restrictive terms of reference, the exclusion of witnesses, and the repression of the "emotional voice of the feeling subject" by holding family and community members to legalistic forms of testimony.¹¹⁷

While not engaged in the "project of recovery" that I attempt by excavating presencing stories, Collard's work is helpful in thinking through the legal and archival gaps that hearing women's presencing might fill.¹¹⁸ In conclusion, Collard lays the groundwork for reform by suggesting that even micro-actions have the potential to bring about important transformations. She gives credence to "(albeit small) moments where power might start to shift."¹¹⁹ As Collard clarifies, the "dominant patterns of oppression and silence" have remained relatively static in settler societies, even in the face of persistent demands for change.¹²⁰ However, she points to another confounding trickster-oriented truth—namely, it is these very same oppressions that give rise to opportunities for "interruption, expansion, subversion, transformation, intervention, and disruption."¹²¹

Collard's suggestions are resonant with the findings relating to the Indian Residential School Truth and Reconciliation Commission (IRSTRC), which was established in Canada in 2008. Naomi Angel argues that alternatives are possible to the silencing of Indigenous voices through law.¹²² In her exploration on the testimony

113. Collard, *supra* note 10.

114. *Ibid* at 789 [capitalization in original].

115. *Ibid* at 790.

116. *Ibid* at 792.

117. *Ibid* at 788.

118. *Ibid* at 782.

119. *Ibid* at 792.

120. *Ibid*.

121. *Ibid*.

122. Naomi Angel, "Before Truth: The Labors of Testimony and the Canadian Truth and Reconciliation Commission" (2012) 53:2 *Culture, Theory and Critique* 199.

given at public hearings, Angel acknowledges that the IRSTRC could potentially “constrain and shape . . . survivor testimony.”¹²³ At the same time, she argues that survivors had the ability to challenge restrictions by “asserting their own agency and empowerment through the process.”¹²⁴ This declaration inspires this examination into presencing as a model of inquiry.

Drawing from the life stories of Kinew James and Amber Tuccaro, I queried whether acknowledging agency might shift the focus to the blameworthiness of institutions and failed policies. With Simpson and those who write in a similar vein, I investigated how presencing might bring visibility to the ways in which missing and/or murdered women manifested agency, in defiance of the more typical fascination with their perceived vulnerability and victimhood. Arguably, the use of presencing to support Indigenous groups in their quest to change legal norms of qualitative inquiry might ensure that Indigenous and feminist advocates would have a significantly greater ability to seek legal recourse for the harms caused by colonial-inspired, racialized, and gendered violence. In addition to the analysis of the women’s stories, this overview of complimentary literature suggested that Simpson’s presencing could aid socio-legal investigations into traumatic incidents because this lens demands that we bear witness to a host of lived experiences beyond our frozen gaze on victimization. While central to the documentation of the brutal record of settler colonialism, these accounts fail to acknowledge the Indigenous agency that rests in stories.

The Important Project of Becoming Dispossessed from Ourselves

Throughout this article, I have presented presencing in a largely favourable light based on the scholarship of Simpson along with de Finney, who adopted this mode of inquiry within their qualitative research. While favourable to presencing, it is also important to note the potential limitations. Scholars point out that telling stories involving violence and death is made difficult given that much of what has been experienced is barely speak-able.¹²⁵ Legal systems may be ill-equipped to capture these sometimes incomprehensible stories, especially given their emotional charge. Furthermore, prior scholarship has documented the challenges courts experience when attempting to contextualize racialized lives during sentencing.¹²⁶ These worrisome findings suggest that the legal system’s capacity to move beyond its Eurocentric, authoritative metrics is limited. Reservations about looking to the

123. *Ibid* at 201.

124. *Ibid*.

125. Tamas, *supra* note 19 at 444.

126. See, for example, Sonia N Lawrence & Toni Williams, “Swallowed Up: Drug Couriers at the Borders of Canadian Sentencing” (2006) 56:4 *University of Toronto Law Journal* 285.

dominant society to realize transformation and reconciliation are also embedded in Simpson's work. She encourages recognition from Indigenous decision makers including one's self, family, nation, or community rather than mainstream institutions, including legal systems.¹²⁷ Throughout *Dancing on Our Turtle's Back*, Simpson underscores the importance of recognition from Indigenous communities rather than from settler state institutions. Simpson's work requires that we abandon the preoccupation with a "settler future" driven by dominant society's priorities and reorient towards issues of "land, sovereignty, and resurgence."¹²⁸ Simpson's concern that singular reforms are insufficient to counter centuries of colonial trauma may be lost if documenting stories, rather than remedying harm, becomes the fixation.

With these cautions in mind, I continue to favour the presencing lens as an aid to survivors who want the depth of their loss recognized. Making their words and the descriptions provided by their families a focal point of this study promotes the kind of witnessing promoted by Geraldine Pratt.¹²⁹ In her study on legal abandonment in Vancouver—comparing the murders of Indigenous women and the plight of live-in caregivers on temporary work visas—Pratt issues a call for "respect, dignity and responsibility."¹³⁰ She argues that truly hearing the stories of the dispossessed, whether personally or in testimony by family members, can alter the listener observer. She follows Judith Butler in asserting that allowing ones' self to mourn and to be beside ones' self with grief is to submit to a transformation. Pratt states:

Rather than returning the murdered women to us—through the conventions of family, or abstract ideals of human dignity and respect, or paranoid fears about a generalized vulnerability to sexual predators—mourning the missing women would involve allowing our relationship to them to change us, to become dispossessed from ourselves.¹³¹

This attempt to extract the presencing attempts by Kinew and Amber from the broader stories of disappearance and loss may accomplish some of Pratt's aims. While their cases were particularly scrutinized, this article hopes to have relevance beyond the two factual situations. It was prepared on behalf of missing and murdered women more generally as it suggests a strategy for contemplating their lives beyond damage and disorganization. That all of the women mentioned operated in innovative, life-affirming ways, yet were met with harm, reinforces the need to attend to the extreme vulnerability.¹³² Pinpointing women's lived navigation of

127. Simpson, *supra* note 1 at 19.

128. De Finney, *supra* note 6 at 34.

129. Pratt, *supra* note 103.

130. *Ibid* at 1069.

131. *Ibid* at 1073.

132. De Finney, *supra* note 6 at 20.

social, economic, and political inequality bolsters arguments that individual healing and esteem building are only partial answers. These strategies are limited as safeguards against victimization within the context of the ongoing challenges of decolonization.

In response to the alarming numbers and horrific facts regarding the disappearances and homicides, scholars and advocates remind us that women's bodies, like Indigenous lands, have been deemed as available for exploitation.¹³³ By placing women's pronounced vulnerability alongside their acts of agency, these cases help show that Indigenous communities and nations' demands for land and sovereignty are properly characterized as efforts to ensure the safety of Indigenous women. The research that has found that Indigenous women experience pronounced marginalization seems to have found expression in the case studies involving a death in custody as well as a homicide. Both stories underscore the importance of systemic change.

Conclusions

This article has worked to offer an alternative to the silencings and exclusions that have characterized media and law enforcement responses to disappearances and homicides. It has highlighted investigations probing the ways the justice system fails Indigenous women by denying them fairness, accountability, and appropriate representation. I argued that we can use "presencing" to come to know more about Indigenous women's stories alongside and beyond violence. I proceeded by looking into two case studies of tragic, premature deaths. By examining some aspects of Kinew James's and Amber Tuccaro's lives and by scrutinizing some of their last words, I worked to bring legibility to them as citizens who modeled many moments of space taking and resurgence. This investigation has relied on the admittedly fragmented accounts that have surfaced largely in mainstream news stories. While limited in scope, this examination has allowed for important goals to be realized: setting out preliminary findings on presencing even when extreme trauma has occurred and explaining ways Simpson's research might support and propel justice reforms. Because it applies relatively new terminology coined by Simpson, this investigation may have implications beyond the incidents under review. Centralizing the women's stories and words helps us take up Amber Dean's urgent call that members of settler societies reckon with "how the past is everywhere evident in the present-day making of our social world" and that we more fully acknowledge "how this relates to questions about justice in the present."¹³⁴

133. See the discussion in Kaye, *supra* note 7.

134. Dean, *supra* note 22 at 150–51.

This article has suggested that legal inquiry might oppose damaging representations by highlighting the deceased women's lives as creative, innovative, and emergent, even though framed by colonial violence. Documenting presencing by and on behalf of missing and murdered women seems to contribute to the pursuit of justice. Examining cases of missing and murdered Indigenous women from a presencing lens may help to show the "light" in those who have been taken. It offers a way to challenge the stigma, abjection, and pity that often follows the cases. Showcasing Indigenous women's resilience, foregrounded by pronounced structural inequality and violence, has been investigated as a pathway to the accountability from mainstream institutions that Indigenous survivors have called for in response to the crisis. In this article, presencing has been promoted as a way of witnessing traumatic loss that might have the power to transform legal processes, from prosecutions to inquiries, by affirming the disappeared women as capable agents.

Copyright of Canadian Journal of Women & the Law is the property of UTP/Canadian Journal of Women & the Law and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.