

**Intersectionality: Gender and Race in the Court**

by

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## **Abstract**

This study investigated the effects of defendant gender (man/woman) and race (Indigenous/White) on Canadian mock jurors' verdicts in a case of parent-perpetrated child neglect. The potential intensified negative consequences against Indigenous women, produced by the intersectionality of gender and race, were of particular interest.

Four hundred and one participants read a mock trial transcript, provided verdicts on two charges, and rated the defendant on a variety of adjectives. Logistic regressions revealed mock jurors were not influenced by the defendant's gender or the interaction between the defendant's gender and race. Race had an unpredicted influence, with an Indigenous defendant receiving fewer guilty verdicts. The adjective ratings moderated the effect of gender on verdicts, but not race.

Mock jurors were less likely to find a woman guilty when they held positive impressions of her.

This study contributes to previous literature that suggests jurors' verdicts may be influenced by extralegal factors.

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## Table of Contents

|   |             |
|---|-------------|
| <b>Abstract.....</b>  | <b>ii</b>   |
| <b>Acknowledgments .....</b>                                | <b>iii</b>  |
| <b>Table of Contents .....</b>                              | <b>iv</b>   |
| <b>List of Tables .....</b>                                 | <b>viii</b> |
| <b>List of Figures.....</b>                                 | <b>ix</b>   |
| <b>List of Appendices.....</b>                              | <b>x</b>    |
| <b>Intersectionality: Gender and Race in the Court.....</b> | <b>1</b>    |
| The Canadian Jury System.....                               | 3           |
| Extralegal Factors .....                                    | 4           |
| Information-Processing & Stereotypes .....                  | 4           |
| Defendant Gender .....                                      | 6           |
| <i>Mock Jury Studies</i> .....                              | 9           |
| Gendered Behaviour & Stereotypes.....                       | 12          |
| Indigenous Peoples of Canada .....                          | 14          |
| <i>Child Welfare Investigations</i> .....                   | 15          |
| <i>Indigenous Frameworks for Parenting</i> .....            | 16          |
| <i>Incarcerations, Policing, &amp; Rehabilitation</i> ..... | 18          |
| <i>Stereotypes of Indigenous Peoples</i> .....              | 21          |
| Defendant Race .....  | 23          |

|   |           |
|---|-----------|
| <i>Aversive Racism</i> .....                        | 23        |
| <i>Mock Jury Studies</i> .....                      | 25        |
| Intersectionality.....                              | 28        |
| <b>Purpose and Hypotheses</b> .....                 | <b>32</b> |
| <b>Method</b> .....                                 | <b>35</b> |
| Participants.....                                   | 35        |
| Materials .....                                     | 37        |
| <i>Mock Trial Transcript</i> .....                  | 37        |
| Measures .....                                      | 39        |
| <i>Dichotomous Verdict</i> .....                    | 39        |
| <i>Defendant Attributes</i> .....                   | 39        |
| <i>Attention and Manipulation Checks</i> .....      | 40        |
| Procedure .....                                     | 40        |
| Pilot Study.....                                    | 41        |
| <b>Results</b> .....                                | <b>43</b> |
| Exploratory Factor Analysis .....                   | 45        |
| <i>Gender and Indigeneity Scales</i> .....          | 45        |
| <i>Defendant Impression Scale</i> .....             | 46        |
| Defendant Impressions.....                          | 48        |
| Dichotomous Verdict .....                           | 49        |
| <i>Failure to Provide Necessaries of Life</i> ..... | 50        |

|   |           |
|---|-----------|
| <i>Criminal Negligence</i> .....        | 52        |
| <b>Discussion</b> .....                 | <b>54</b> |
| Pilot Study.....                        | 54        |
| Defendant Impressions.....              | 55        |
| Defendant Gender .....                  | 57        |
| Defendant Race .....                    | 59        |
| Intersectionality.....                  | 62        |
| Implications.....                       | 64        |
| Limitations and Future Directions ..... | 68        |
| Conclusion .....                        | 69        |
| <b>Appendices</b> .....                 | <b>70</b> |
| Appendix A.....                         | 70        |
| Appendix B .....                        | 72        |
| Appendix C .....                        | 84        |
| Appendix D.....                         | 85        |
| Appendix E .....                        | 88        |
| Appendix F.....                         | 91        |
| Appendix G.....                         | 93        |
| Appendix H.....                         | 104       |

|                         |            |
|-------------------------|------------|
| Appendix I .....        | 105        |
| Appendix J .....        | 108        |
| Appendix K.....         | 111        |
| <b>References .....</b> | <b>117</b> |

## List of Tables

|   |    |
|---|----|
| Table 1 – <i>Mean Stereotype Adjective Ratings by Defendant Gender and Race</i> .....   | 43 |
| Table 2 – <i>Defendant Impressions Model Loadings</i> .....   | 40 |
| Table 3 – <i>Verdict Counts and Percentages for Failure to Provide the Necessaries of Life</i> .....                              | 51 |
| Table 4 – <i>Summary of Coefficients for Logistic Regression on Verdicts for Failure to Provide the Necessaries of Life</i> ..... | 51 |
| Table 5 – <i>Verdict Counts and Percentages for Criminal Negligence Causing Bodily Harm</i> .....                                 | 52 |
| Table 6 – <i>Summary of Coefficients for Logistic Regression on Verdicts for Criminal Negligence Causing Bodily Harm</i> .....    | 53 |



## List of Figures

|   |    |
|---|----|
| Figure 1 – <i>Mean Defendant Impressions by Defendant Gender and Race</i> ..... | 49 |
|---|----|

## **List of Appendices**

|  |     |
|--|-----|
| Appendix A: Jury Eligibility Screening.....                      | 70  |
| Appendix B: Mock Trial Transcript .....                          | 72  |
| Appendix C: Verdict Questionnaire.....                           | 84  |
| Appendix D: Gender and Indigeneity Adjectives .....              | 85  |
| Appendix E: Demographic Questionnaire .....                      | 88  |
| Appendix F: Manipulation Checks .....                            | 91  |
| Appendix G: Pilot Study Mock Trial Transcript .....              | 93  |
| Appendix H: Pilot Study Verdict Questionnaire .....              | 104 |
| Appendix I: Pilot Study Gendered Behaviour Questionnaire.....    | 105 |
| Appendix J: Pilot Study Gendered Behaviour Results .....         | 108 |
| Appendix K: Gender and Indigeneity Adjective ANOVA Results ..... | 111 |

## **Intersectionality: Gender and Race in the Court**

This research examined a serious issue that is the result of systemic biases that perpetuate and maintain the colonisation of Indigenous peoples in Canada: the over-representation of Indigenous peoples who are incarcerated<sup>1</sup>. Specifically, one avenue of this issue was explored, which is bias in jurors' decision-making. Because this topic strongly affects Indigenous peoples, I will engage in the process of decolonizing this research by incorporating Indigenous ways of knowing (Datta, 2018; Thambinathan & Kinsella, 2021). To achieve this, I will highlight research and perspectives by Indigenous researchers and authors in regards to colonisation, residential schools, and intergenerational trauma. I will incorporate Indigenous frameworks relating to parenting and to healing for those who are incarcerated, and Indigenous perspectives on how the Western child welfare and prison systems devalue and invalidate these ways of knowing. To reflect the diverse histories, experiences, and belief systems of Indigenous communities (Thambinathan & Kinsella, 2021), I will state the nation of which Indigenous authors are a member, whenever possible.

Finally, I will follow other authors' practice of situating myself in order to contextualize this research (Hyatt, 2019; Rousell, 2018; Thambinathan & Kinsella, 2021). I am White, of primarily British descent, and was born and raised in Canada. I will be using a Western methodology, which can perpetuate the colonial view that Western approaches are the only scientific method (Datta, 2018; Thambinathan & Kinsella, 2021). To combat this, as noted

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<sup>1</sup> When discussing individuals involved in the justice system, I will avoid terminology like "offender," which can perpetuate dehumanisation and stigmatisation of these individuals (Harney et al., 2022; Tran et al., 2018). Instead, I will use person-centred language, which prioritizes the person (Tran et al., 2018). Specifically, I will use suggestions by Boppre and Reed (2021, p. 208) for feminist criminology and by Tran et al. (2018) – individuals "who are incarcerated" or "involved in the criminal justice system" – to humanise the individuals and avoid reducing their personhood to their involvement in the justice system.

above, I will highlight Indigenous researchers and Indigenous ways of knowing when discussing the history and experiences of Indigenous peoples (Thambinathan & Kinsella, 2021).

The history and continuance of colonialism in Canada will be explored in greater depth. As a brief introduction, White settlers in Canada have and continue to enact a cultural genocide against Indigenous peoples (Blackstock, 2003; Sinclair, 2019; Truth and Reconciliation Commission [TRC], 2015) to eradicate their beliefs, languages, practices, and religions, and to assimilate them into White society. Although some prefer to think of Canada as post-colonial, the structural racism embedded in institutions and policies contradicts this. One example of such an institution is the child welfare system, which continues to remove Indigenous children from their homes and communities at alarmingly high rates. While only 7.0% of Canadian children are Indigenous, they represent 48.1% of children in foster care (Statistics Canada, 2018a) and 19.0% of child welfare investigations (Fallon et al., 2021). Given that child welfare investigations of Indigenous families involve a mother 79.0% of the time (Crowe & Schiffer, 2021), it is possible that an interplay of both race- and gender-based stereotypes significantly contribute to case outcomes. This is known as intersectionality (Crenshaw, 1989), which predicts that the effects of gender and race interact to produce greater negative consequences for racialized women. This intersectionality may also contribute to the over-representation of Indigenous women in rates of Canadian incarcerations. The intersection of gender- and race-based stereotypes in court outcomes is the focus of the current study, which manipulated a defendant's characteristics using a 2 (gender: woman, man) x 2 (race: Indigenous, White) between-subjects design. A planned third defendant manipulation, gendered behaviour (permissible, impermissible), was removed after pilot testing.

## The Canadian Jury System

Every Canadian citizen charged with a crime has the right to a fair and impartial trial by an independent tribunal (*Charter of Rights and Freedoms*, 1982, s 11(d)). The general public has a strong role in jury panels, with nearly any Canadian of majority age able to serve (Department of Justice, 2021a). With some province-by-province variation, exclusions include those whose professions involve the law or administration of justice, such as lawyers, peace officers, and military personnel (Department of Justice, 2015). These criteria are intended to support representation of the general population in criminal trials, given the perception that those who are formally educated and/or working in the law or legal system may unduly sway jurors' opinions due to their knowledge and experience (Law Reform Commission of Canada [LRCC], 1980). It is important to note that in practice, the Canadian jury system often fails in this aim (Kettles, 2013), especially due to long-standing exclusion of Indigenous peoples (Iacobucci, 2013; Israel, 2003). However, representativeness is necessary for juries to fulfill their varied functions, as identified by the LRCC (1980): fact-finding, representing the conscience of the community, protecting against oppressive laws and law enforcement, acting as an educative institution, and legitimising the criminal justice system.

Despite their lack of training and expertise in the law, jurors may enter the courtroom with preconceived conceptions of the law and its application (Fox, 2020). When jurors incorporate these personal understandings and interpretations into their duties as jurors, they may create a divergency in legal decisions despite receiving the same instructions and hearing the same testimony. This is further complicated by the secrecy of jury proceedings. As codified in the *Criminal Code* (1985, s. 649), it is a punishable offence to divulge any information about a jury's deliberations. The constitutionality of this law has been upheld by the Supreme Court (*R v.*

*Pan; R v. Sawyer*, 2001). Consequently, the processes jurors undergo to reach a verdict, including their reasoning, cannot be revealed. Altogether, this means that our criminal justice system relies upon the legal decision-making of general citizens who necessarily lack legal training, whilst limiting safeguards that may help ensure their comprehension of the law, the evidence provided in court, and legal procedures.

### **Extralegal Factors**

The use of juries may exacerbate disparity in the courts, whereby a defendant is acquitted by one jury but a similar case results in conviction by another jury (LRCC, 1980). Extralegal factors, which are factors with no legal relevance to a case, may be contributing to these disparities. The consideration of extralegal factors, specifically prejudices against or stereotypes about a certain group, are contrary to section 15(1) of the *Charter of Rights and Freedoms* (1982), which guarantees the right to equality before/under the law, to equal protection of the law, and to equal benefit of the law without discrimination based on race, sex, and other characteristics.

Jurors are provided with instructions that outline their duty as triers of fact, which means they must come to a verdict based on the evidence presented in court and disregard any personal prejudices (National Judicial Institute [NJI], 2014). However, these instructions may not be an adequate guard against extralegal factors in jury decision-making because jurors may not even be conscious of their influence. Rather, the consideration of extralegal factors, despite instructions prohibiting this, may be aided by understanding mental short-cuts in information-processing.

### **Information-Processing & Stereotypes**

In his pivotal work on prejudice, Allport (1954) argued that erroneous generalisations, particularly about ethnic groups, are a natural human tendency. Faced with vast amounts of

information to process, we simplify and organise input through the process of categorisation (Allport, 1954), which is a cognitive short-cut that sorts and clusters information into broad generalisations. Though these generalisations may create inaccuracies due to oversimplifications, clustering related information allows for an ease of use in guiding our expectations and behaviours. To illustrate, Allport (1954) points out that a darkened sky is associated with a prediction of oncoming rain, and one might therefore grab an umbrella when going outside. Although this situation was prejudged based on an existing category of information, the prediction may be incorrect and it may not in fact rain.

The process of categorisation also creates stereotypes, which are beliefs we hold regarding a category that may be positive or negative in nature (Allport, 1954). Based on the categorised social group to which an individual belongs, we can use stereotypes to derive expectations of their characteristics and qualities (e.g., appearance, behaviour, personality traits, etc.; Hamilton & Trolie, 1986). Stereotypes are distinct from, though related to, cognitive informational categories. For example, we may organise people into sex categories based on salient features (e.g., secondary sexual characteristics) – categories which are, in and of themselves, neutral. However, when we assign positive or negative qualities to a group (e.g., females are intellectually inferior to males), this constitutes a stereotype.

Beyond this cognitive categorisation mechanism, the formation of stereotypes, and their contents, are influenced by several factors as described by Bar-Tal's (1997) integrative model. The first factor is an individual's background variables, which include socio-political factors, economic conditions, behaviour of other groups, history of intergroup relations, and nature of intergroup relations. The second factor is transmitting mechanisms, which convey information about groups that will form and influence an individual's perceived stereotypes. These

mechanisms include political, social, cultural, and educational channels; socialising agents such as family, who model and reinforce stereotypic content; and direct contact with members of a particular group. However, stereotypic information is mediated by personal variables, including an individual's beliefs, attitudes, values, motivations, personality, language, and cognitive skills. For example, an individual with low cognitive complexity may be more likely to rely on simplified information (such as generalisations). In terms of motivations, an individual may favour their own in-group and denigrate out-groups as a means of increasing self-evaluation, resulting in the endorsement of positive stereotypes for their in-group and negative stereotypes for out-groups (Tajfel & Turner, 1979, as cited in Bar-Tal, 1997).

The role that stereotypes about Indigenous peoples have and continue to play in the context of colonisation will be discussed below. It is pertinent to note, however, that transmitting mechanisms can promote stereotypes as a means to an end. In Canada specifically, stereotypes about Indigenous peoples justified the use of residential schools, enacted as part of a cultural genocide, under the guise of civilizing 'savages' (TRC, 2015). By also denigrating the parenting abilities of Indigenous peoples, stereotypes legitimise the high rates of Indigenous children apprehended by child welfare services (Lindstrom & Choate, 2016; TRC, 2015).

### **Defendant Gender**

An extralegal factor that may influence jurors' decision-making based on group membership is defendant gender<sup>2</sup>. Women are hugely under-represented in the Canadian incarcerated population and appear to experience attrition throughout their involvement with the

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<sup>2</sup> In this study and the literature reviewed, gender is treated as a dichotomous man/woman variable. As noted by Cameron and Stinson (2019), this continued trend fails to acknowledge the diversity of gender. In the current study, the use of a dichotomous gender variable allowed this variable to align with the socially constructed behaviours traditionally assigned to mothers and fathers. However, in line with Cameron and Stinson (2019), the demographic questionnaire for participants used an inclusive measure that recognises gender diversity.



justice system. Women account for 25.0% of police-reported crime (Savage, 2019), 20.0% of court cases, and only 6.0% of federal inmates (Correctional Service Canada [CSC], 2019). Sixty-two percent of women who are incarcerated have sentences of less than five years (CSC, 2019), compared to 49.3% of all individuals involved in the criminal justice system (Public Safety Canada Portfolio Corrections Statistics Committee, 2020). Overall, women also spend less time in pre-sentence and sentenced custody (Malakieh, 2020), and they receive both day parole (86.0% vs. 71.1%) and full parole (42.0% vs. 29.3%) at rates higher than men (Public Safety Canada Portfolio Corrections Statistics Committee, 2020).

Although no archival analyses have examined gender bias in Canadian incarcerations or convictions, such analyses have been conducted in the United States over the decades. The findings are mixed, and these inconsistencies may reflect differences in norms across America given the analyses were conducted in multiple states. Some research has demonstrated null effects for gender. For example, Kruttschnitt and Green (1984) found defendant gender did not affect sentencing decisions. While Crew (1991) initially found that men received longer sentences, this was explained by the severity of the offence and charge. Both Daly (1987) and Freiburger (2011) accounted for familial responsibility in their analyses. But whereas Daly (1987) found that women who have familial responsibilities received greater leniency than men with familial responsibilities, Freiburger (2011) found that defendants who lived with children were less likely to be incarcerated, regardless of gender.

Other research has demonstrated leniency toward women. Although there were no gender differences in convictions in their studies, Curran (1983) and Gruhl and Welch (1984) found women received more lenient sentences. In contrast, Steffensmeier et al. (1993) found a small-moderate effect of gender on incarcerations, with women being incarcerated less often, but no

effect of gender on sentencing length. Freiburger and Hilinski (2013) also found no gender differences in sentencing, but women were more likely to receive probation. Mustard (2011) found that women receive shorter sentences for a variety of crimes. After controlling for both extralegal (e.g., race, age) and legal (e.g., criminal history, offence type) factors, Doerner and Demuth (2014) found women were less likely to be incarcerated overall, and when they were, they received shorter sentences. More recently, Starr (2015) found that women receive shorter sentences than men across a range of drug and non-drug offences.

Finally, other studies have found that leniency toward women depends on the type of crime with which they are charged. Johnston et al. (1987) found that men were more likely to be sentenced and incarcerated overall, but women were sentenced to jail at higher rates for masculine-type crimes. Masculine-type crimes are violent, such as robbery or assault (Johnston et al., 1987), and violate gender stereotypes for women. An example of a feminine-type crime, in contrast, is shoplifting (Maeder et al., 2018). Rodriguez et al. (2006) found that men received harsher punishments for property and drug offences, but found no gender difference for violent crimes. Similarly, Koons-Witt et al. (2014) found that women received more lenient sentences overall, but there were no differences in sentencing for homicide and robbery.

There are two main theoretical explanations for potential gender biases in the criminal justice system. First, the chivalry/paternalism hypothesis explains that women receive leniency because they are perceived as weak, poor decision-makers, and requiring protection (Franklin & Fearn, 2008; Grabe et al., 2006; Gruhl & Welch, 1984; Nagel & Hagen, 1983; Nagel & Johnson, 1994). In the context of the criminal justice system, legal actors (i.e., judges and jurors) wish to protect women from harsh sanctions like incarceration. It is important to note that this applies to women who conform to gender stereotypes, such as those who commit non-violent crimes

(Grabe et al., 2006). On the other hand, the evil woman hypothesis predicts that women who violate traditional gender norms will receive harsher punishments (Grabe et al., 2006; Nagel & Hagen, 1983; Nagel & Johnson, 1994). These violations may stem from the nature of the crime (e.g., murder) or the defendant's behaviour (e.g., aggressive), and render such women undeserving of any preferential protections. As a consequence, their harsher punishments serve as a sanction for both their crime and their gender norm violation (Bernstein et al., 1977; Crawford & Bradley, 2016; DeFleur, 1975; Nagel & Hagan, 1983; Rasche, 1974). This is supported by the aforementioned studies that found leniency toward women was absent for masculine-type or violent offences (i.e., Johnston et al., 1987; Rodriguez et al., 2006; Koons-Witt et al., 2014).

### ***Mock Jury Studies***

Overwhelmingly, empirical studies using mock jurors have found no gender bias in verdicts. Mazzella and Feingold (1994) performed a meta-analysis of 80 Canadian and American empirical studies examining various extralegal factors, including defendant gender. The findings revealed that women defendants were treated more leniently for theft only. Across all crime types together, there was no gender difference in judgments of guilt. In a more recent meta-analysis, Devine and Caughlin (2014) found a statistically significant bias against women defendants. However, given that the size of the effect was close to zero, the authors concluded this did not indicate a meaningful effect of defendant gender. In a test of gender-crime congruency (i.e., whether a crime is congruent or incongruent with stereotypes of a defendant's gender), Maeder et al. (2018) examined two crimes: grand theft of a vehicle, stereotypically committed by men; and shoplifting, stereotypically committed by women. Results showed defendant gender did not affect dichotomous verdicts or jurors' impressions of the defendant in

either crime type.

However, some authors also using American samples have found gender-related effects. In an examination of the insanity defence, Breheney et al. (2007) found a woman defendant was rated as guiltier than a man in a case of homicide. This went against the authors' expectations, as they predicted the chivalry/paternalism hypothesis would result in mock jurors' leniency toward a woman defendant. Participants also rated the woman as less able to manage her mental illness compared to a man defendant, and the authors noted she may have been seen as lacking self-control and an ability to care for herself (Breheney et al., 2007).

Other studies have found this predicted leniency toward women. Quas et al. (2002) found defendant gender did not affect verdicts or perceptions of the defendant's believability or responsibility in a case of molestation of a 15-year-old, but mock jurors reported higher confidence in a man's guilt. In Winter's (2018) study of a teacher-perpetrated sexual assault against a student, participants reported higher ratings of guilt and responsibility, and lower credibility, for a man defendant. Although there were no gender differences in sentencing recommendations or likelihood of reoffending, for those that returned a not-guilty verdict, they were more confident in their verdict when the defendant was a woman.

Some studies have found mixed results with Canadian samples. Pozzulo et al. (2010) found leniency toward a woman defendant in a case of a teacher-perpetrated sexual assault against a student, as mock jurors perceived a man defendant as significantly guiltier. However, defendant gender did not affect sentencing recommendations or perceptions of the defendant's responsibility. Maeder and Dempsey (2013) did not observe leniency toward a woman defendant in a murder trial. In fact, there was no effect of defendant gender on continuous verdicts or belief in the defendant's testimony or alibi. However, participants reported a more positive impression

of a woman defendant. Finally, in Mossière and Maeder's (2016) mock murder trial, participants displayed ambivalent impressions of a woman defendant. Though there were no gender differences in dichotomous verdict, participants assigned more internal attributions to a woman defendant (e.g., blamed the crime on the woman's personality rather than her environment) but they perceived her criminal behaviour as less stable over time (i.e., she had a lower likelihood of reoffending).

While many analyses of criminal incarcerations and convictions have separated types of crimes to see how these impact gender bias (e.g., violent offences vs. non-violent offences), crimes against children have not been separately analysed. Of the few mock juror studies that have examined crimes against children, most involve sexual abuse perpetrated by a non-parent (e.g., Pozzulo et al., 2010; Winters, 2018). Pettalia et al.'s (2017) Canadian study examining various types of child abuse included both victim and mock juror gender, but not defendant gender. In all experimental conditions, the perpetrator was a foster father.

To address this gap in the literature, my honours thesis (Roberts & Boyce, 2021) examined the influence of defendant gender in a case of parent-perpetrated child neglect. A sample of 200 Canadian undergraduate students was recruited to read a vignette, adapted from two previous studies in social work, that depicted a scenario in which four children were neglected by a parent. The parent was the children's mother or father and displayed behaviour that either conformed to or violated expectations for his/her gender. Participants completed a Likert scale questionnaire rating the defendant's guilt, their certainty in the defendant's guilt, the seriousness of the crime, the defendant's likelihood of reoffending, and their recommended sentence length. Although gender alone did not have a significant effect on any of these scales, there was an interaction between gender and gendered behaviour, such that mothers whose

behaviour violated gender expectations received the harshest judgments on guilt, certainty in guilt, and perceived likelihood of reoffending. A gap remains in the literature that has left crimes against children perpetrated by a parent otherwise unexamined.

### **Gendered Behaviour & Stereotypes**

In addition to an accused parent's gender, their behaviour may affect jurors' perceptions of guilt, depending on how those behaviours are socially categorised. Prentice and Carranza (2002) created a four-category framework to classify contemporaneous gender stereotypes in North American society. These stereotypes comprise of prescriptions (i.e., socially-permissible behaviours) and proscriptions (i.e., socially-impermissible behaviours). For both men and women, conformity to permissible behaviour results in social benefits, such as desirability, whereas engagement in impermissible behaviour is seen as a violation and results in social punishments, such as censure (Prentice & Carranza, 2002). For example, women are prescribed behaviours like being cooperative, interested in children, and emotionally expressive, but are proscribed from behaviours like being rebellious, cynical, and controlling. Men are prescribed behaviours like being ambitious, aggressive, and assertive, but are proscribed from behaviours like being emotional, yielding, and naïve.

Despite progress in gender equality, there is evidence that gender stereotypes have not wholly changed. In a comparison from 1983 to 2014, Haines et al. (2016) found women are still stereotyped as being communal, devoted to others, gentle, and emotionally supportive; men are still stereotyped as agentic, competitive, self-confident, and inclined to be leaders. Similarly, a meta-analysis of studies from 1946 to 2018 found that stereotypes continue to cast women as communal and men as agentic (Eagly et al., 2020). There are further stereotypes specifically for parents. For example, mothers are seen as having a biological maternal instinct (Cowdery &

Knudson-Martin, 2005; Ridgeway, 2011), family-oriented, and more responsible for childcare (Haines et al., 2016). On the other hand, fathers are seen as less responsible for or even capable of childcare, because, unlike women, they lack an inherent capability for parenting (Ridgeway, 2011).

With the pervasiveness of these stereotypes in society, there is evidence they are internalised by both parents and child welfare workers. Dolan (2002) assessed the extent to which parents blamed themselves for failures in a variety of stereotypically maternal or paternal child-rearing tasks. Mothers blamed themselves for failures in the maternal tasks (e.g., physical caretaking, providing adequate food, toilet training, seeking medical attention for illness), whereas fathers blamed themselves for failures in the paternal tasks (e.g., entertaining children, providing adequate finances for enrolment in sports, teaching athletic skills). In an examination of social service agents' decision-making, Crawford and Bradley (2016) found that children were more likely to be removed from the home if a mother committed physical abuse than a father. The authors believed that maternal physical abuse violated stereotypes of women as “natural caregivers” and subsequently, these mothers were punished by losing their children (Crawford & Bradley, 2016, p. 229). On the other hand, men are stereotypically seen as prone to violence, and physical discipline has been the traditional duty of fathers. Because paternal physical abuse was seen as conforming to gender stereotypes, these fathers were perceived as simply requiring parental skill development, and may have even received sympathy from case workers. Subsequently, rates of child removal from fathers were lower. In the culmination of this evidence, it is unclear how a parent conforming to or violating gender stereotypes may affect jurors' perceptions of a defendant's guilt and blameworthiness.

## Indigenous Peoples of Canada

Since this research pertains to Indigenous defendants, it is important to contextualise the experiences of those involved in the criminal justice system in historic and present-day colonisation. As noted by Gitksan researcher Blackstock (2003), colonisation marginalises and subjugates a racialized group (i.e., Indigenous peoples) by enacting practices and policies that force these groups to be dependent on the dominant group (i.e., White settlers). This colonisation has been ongoing for hundreds of years. For example, in the 1800s, White settlers dispossessed Indigenous peoples of their lands (Miller, 1989) and forced them into infertile and uncultivable areas, as noted by Métis researcher Fast and co-author Collin-Vézina (2019) and the TRC (2015). George Gordon First Nation member Sinclair (2019) points out this was only one method used by settlers to acquire land and resources, and eradicate Indigenous cultures.

Indigenous peoples and authors report a wide range of such practices, including restricting their movements; denigrating their cultural practices; instituting enfranchisement; and banning their languages, spiritual practices and objects, and forms of government (Sinclair, 2019; TRC, 2015). This interrupted the ways of living Indigenous peoples had used “since time immemorial” (Fast & Collin-Vézina, 2019, p. 168). The ultimate goal was to assimilate Indigenous peoples into White society, thereby destroying their cultures, beliefs, values, and languages (Fast & Collin-Vézina, 2019; Sinclair, 2019; TRC, 2015). This eradication of Indigenous cultures was a cultural genocide, defined by the TRC (2015, p. 8) as “the destruction of those structures and practices that allow the [targeted] group to continue as a group.”

One method of displacing and controlling Indigenous peoples was the *Indian Act* (1876), which created the legal definition of “status Indians”: only those who were of patrilineal Indigenous descent were legally considered Indigenous (Mi’kmaw researcher Lawrence, 2003).



The *Gradual Enfranchisement Act* (1869) furthered the legal control White settlers had over Indigenous peoples by enfranchising (i.e., removing the “Indian status” of) Indigenous women who married non-Indigenous or non-status Indigenous men (Lawrence, 2003). These women were then forced to leave their homes and reservations. By exerting a paternalistic and patriarchal control over not only Indigenous peoples in general, but Indigenous women specifically, Indigenous peoples who were the offspring of enfranchised Indigenous women were and have been removed from their communities and cultures for generations (Lawrence, 2003).

Another tactic used by White settlers was residential schools, which forcibly removed Indigenous children from their homes and placed them in schools run collaboratively by the Canadian government and churches (TRC, 2015). These places were headed by ill-trained staff who inflicted harsh punishments against children, such as for speaking their own languages, as well as neglect, physical abuse, and sexual abuse (TRC, 2015). The schools were also poorly funded, and children were often forced to do chores rather than receive a supposed education (TRC, 2015). By removing children from their homes, the Canadian government used residential schools to disrupt families and communities, thereby stopping Indigenous peoples from passing on their cultures and identities (Fast & Collin-Vézina, 2019; TRC, 2015).

### ***Child Welfare Investigations***

Over time, residential schools were replaced with what Sinclair (2019) termed the “child welfare era,” which is the ongoing apprehension of high rates of Indigenous children by child welfare agencies. This began with the “Sixties Scoop,” which spanned the 1960-80s (Crowe & Schiffer, 2021; Fallon et al., 2021; Sinclair, 2007; TRC, 2015). The majority of children were placed in non-Indigenous homes, eventually leading to one in three Indigenous children being removed from their families (Fournier & Crey, 1997, as cited in Sinclair, 2007). This genocidal

practice (Sinclair, 2019) has carried on, with a “Millennium Scoop” still perpetuated by child welfare services (Sinclair, 2007).

At only 7.0% of Canada’s population of children, Indigenous children represent 19.0% of child welfare investigations, as found by the First Nations/Canadian Incidence Study of Reported Child Abuse and Neglect-2019 (FN/CIS-19; Fallon et al., 2021) and a staggering 48.1% of children in foster care (Statistics Canada, 2018a). Indigenous families are 3.6 times more likely to be investigated than non-Indigenous families (Fallon et al., 2021). When they are, children’s maltreatment is more often substantiated (Blackstock et al., 2004; Crowe & Schiffer, 2021; Fallon et al., 2021; Lavergne et al., 2008) and their cases are more often kept open, referred to outside services, and/or applied to child welfare court (Crowe & Schiffer, 2021; Fallon et al., 2021). Indigenous children are also removed from their homes 14.2 times more frequently than non-Indigenous children (Fallon et al., 2021).

The TRC has implicated racial stereotypes in this problem and argued that “prejudicial attitudes toward Aboriginal parenting skills” contribute to the high rates of Indigenous children in foster care (2015, p. 138). These prejudicial attitudes, as highlighted by Indigenous peoples and researchers, include Indigenous parents being unfit, indifferent to their children (TRC, 2015), and not “good enough” by the colonial perspective (Lindstrom & Choate, 2016, p. 47).

### ***Indigenous Frameworks for Parenting***

With multiple generations forced into residential schools, Indigenous parenting practices and parenting/caregiving models were destroyed (Fast & Collin-Vézina, 2019; Lindstrom & Choate, 2016; TRC, 2015). By using a colonial view of parenting, child welfare agencies fail to account for the intergenerational trauma of residential schools and exclude assessments that are culturally appropriate for Indigenous families (Lindstrom & Choate, 2016). Kainai First Nation

member Lindstrom and co-author Choate (2016) clarify Indigenous views of family, which do not limit this term to the Euro-centric idea of a nuclear or immediate family. Rather, Indigenous cultures commonly view “all people and things [as] related,” which gives a strong parenting role to the community (p. 48). In fact, the support system for raising children is vast, and includes “nuclear, extended, clan, community, nationhood, and cultural families” as well as the natural world at large (p. 48).

As an example of an intricate framework of parenting, Lindstrom and Choate (2016) spoke with six Blackfoot Confederacy Elders. As noted by the Elders, this provides insight into Blackfoot ways of understanding children and family but is not representative of other nations. According to the Elders, there are six interconnected domains that are important to child development: child, family, community, knowledge keepers, culture, and creator. As gifts from the creator, children are spiritually connected to the community and culture. There is no concept of a nuclear family, parenting is not limited to biology, and multiple members of the community may engage in child-rearing. For example, the Blackfoot language did not have words for aunt, uncle, or cousin, but rather viewed such people as parents and siblings.

Blackfoot peoples recognise that parents may not always be the best source of teaching (Lindstrom & Choate, 2016). Knowledge keepers teach children cultural traditions to ensure these carry on to the next generation. In contrast to colonial views that separate and isolate children within the nuclear family, Blackfoot parenting encourages children to establish relationships with their family, community, and clan, which provides a broader sense of safety and connection.

In order for children to know themselves, it is important to reconnect with their traditions, heritage, and ancestry (Lindstrom & Choate, 2016). This is a powerful method of “counter[ing]

the effects of colonisation” (p. 54), and heavily involves Elders teaching and guiding children. Finally, the Elders highlighted understanding intergenerational trauma and the need for healing across generations, as well as emphasising Indigenous stories that do not revolve around colonisation.

It is important to note that the parenting framework, linguistic considerations, and methods of combatting colonisation that have been discussed come from the Blackfoot community, and may not generalise to other Indigenous communities. However, the failure of child welfare agencies to recognise and incorporate Indigenous parenting frameworks whatsoever means that measurements used to assess parenting ability are inaccurate and invalid (Lindstrom & Choate, 2016). It is important for these agencies to incorporate Indigenous epistemology and worldviews (Lindstrom & Choate, 2016; Sinclair, 2019) and by doing so, agencies can begin to address the TRC’s (2015) Calls to Action for child welfare. These include Call to Action 1, reducing the number of Indigenous children in care; Call to Action 4, requiring the residential school legacy be taken into account by child welfare agencies and courts; and Call to Action 5, increasing Indigenous cultural appropriateness in parenting programs.

### ***Incarcerations, Policing, & Rehabilitation***

Indigenous peoples have long been over-represented in federal custody, and since at least the year 2000, their incarceration has continued to rise (Zinger, 2020). However, 2020 marked a “new historic high” (Zinger, 2020, p. 20), with Indigenous peoples accounting for 30.0% of federal incarcerations, but only 5.0% of the general population. This increase has remained steady despite an overall decline in the Canadian incarceration population, a trend referred to as the “‘Indigenization’ of the federal inmate population” (Zinger, 2020, p. 20). In addition, Indigenous peoples who are involved in the justice system are held in custody (70.5%) more than

non-Indigenous peoples held in custody (56.9%; Public Safety Canada Portfolio Corrections Statistics Committee, 2020).

These statistics are not meant to suggest that Indigenous peoples account for a disproportionately high level of criminality compared to non-Indigenous populations. In fact, it is important to contextualise the issue of over-representation in the cultural genocide and ongoing efforts toward assimilation, discussed above. The TRC (2015) points to additional factors, including systemic biases in the justice system, mandatory minimums, lack of culturally-appropriate rehabilitation, and intergenerational trauma (TRC, 2015). The intergenerational trauma caused by residential schools has had and continues to have multiple devastating effects, such as spiritual and cultural disconnection; loss of family, community, and nation; physical, emotional, and sexual abuse inflicted by staff; and issues with mental health and alcohol/substance abuse (TRC, 2015). In an interview with Heidt (2021), Adams, a member of the Tla'amin First Nation, noted several other consequences he has observed as a physician. First, Indigenous peoples are last in indicators of health and socioeconomic status. For example, Indigenous peoples have high rates of diabetes, complications from diabetes, and mortality from diabetes. Second, Indigenous peoples are marginalised and receive a lack of resources, despite the high standard of living in Canada. Third, there is a long-standing mistrust of the government and other systems, such as healthcare (Heidt, 2021).

Another contributing factor to over-representation in incarcerations is the simultaneous over- and under-policing of Indigenous peoples by non-Indigenous police forces (Aboriginal Justice Implementation Commission, 1999; Amnesty International, 2004; Ontario Human Rights Commission, 2003; Rudin, 2005). From over-policing, Indigenous peoples experience excessive scrutinization, investigation, and criminal charges by police compared to other racial groups, and

even abuse (Aboriginal Justice Implementation Commission, 1999; Ontario Human Rights Commission, 2003; Commission on First Nations and Métis People and Justice Reform, 2004). Simultaneously, Indigenous peoples are under-served by police services, receiving less assistance and support, and they are often ignored by police when they are victims of crimes (Aboriginal Justice Implementation Commission, 1999; Amnesty International, 2004; Ontario Human Rights Commission, 2003). These oxymoronic effects engender strong mistrust of the police amongst Indigenous peoples (Aboriginal Justice Implementation Commission, 1999; Ontario Human Rights Commission, 2003; Rudin, 2005). Indigenous peoples may feel like they cannot go to police for help, suffer from a loss of dignity and self-esteem due to negative experiences with police, and become hyper-vigilant of their own appearance and behaviours to reduce the likelihood of drawing police attention (Ontario Human Rights Commission, 2003).

To aid in reducing the over-representation of Indigenous peoples who are incarcerated, it is important to provide these individuals with rehabilitation that aligns with Indigenous frameworks of healing. Hyatt (2019) highlights several of these methods, such as sweat lodges, where individuals sit in an enclosed dome with a central fire (Anishnawbe Mushkiki, n.d.). These offer several benefits, such as self-reflection and physical, mental, and spiritual purification and healing (Hyatt, 2019). As an alternative to imprisonment, individuals can be placed in healing lodges, where they can connect with nature and receive guidance and teachings from Elders. Sacred Circles provide individuals with the opportunity to openly discuss their issues with Elders and other Indigenous peoples who are incarcerated, and healing is promoted by connecting individuals to traditional beliefs. To conclude a non-exhaustive list, Hyatt (2019) also suggested the use of sacred medicines (e.g., tobacco). Because these medicines do not require the presence or guidance of an Elder, individuals can utilise these on their own as needed.

### *Stereotypes of Indigenous Peoples*

Stereotypes serve a purpose to legitimise and perpetuate institutions that marginalise Indigenous peoples and make them dependent on White settlers. For example, as previously noted, the TRC (2015) stated that characterising Indigenous peoples as unfit parents creates misconceptions that Indigenous families require intervention from the Canadian government. The pervasive and enduring stereotypes that non-Indigenous populations hold about Indigenous peoples may also contribute to the Indigenization of incarcerations. These include ideas that Indigenous peoples are addicts, alcoholics, gamblers, poor, and lazy (Environics Institute et al., 2016; Erhart & Hall, 2019; Haddock et al., 1994) and unattractive, dishonest, and irresponsible (Pfeifer & Ogloff, 2003). In their qualitative analysis of prejudice toward Indigenous peoples, Brockman and Morrison (2016) interviewed 13 White Canadians who initially scored highly on a prejudice scale. These participants held beliefs that Indigenous peoples are poor, dependent on welfare and other government “hand-outs,” prone to addiction, and lazy (Brockman & Morrison, 2016, p. 22). The participants reported that these stereotypes, which generated automatically in their minds, were largely the result of direct negative experiences (despite 12 out of 13 participants also reporting positive experiences) and socialisation (e.g., family, media). In Morrison et al.’s (2008) study, Canadian men and women completed a cultural stereotype checklist regarding societal stereotypes of either Indigenous men or women. There was consensus among men and women participants that both Indigenous men and women are stereotyped as being welfare dependent, alcoholic, poor, uneducated, and physically dirty. There was near consensus regarding Indigenous peoples being criminal, bad parents, lazy, and undisciplined. There were some differences by target gender, with Indigenous men rated as abusive, aggressive, and dangerous. Indigenous women received the only positively-valenced

attribute, which was being spiritual.

In an analysis of nationally representative data, Godley (2018) found that Indigenous peoples were the third most-likely to report experiencing discrimination in Canada (behind those who identified as Black and those who identified as Asian). Similarly, in a survey of 3,111 Canadians, Indigenous peoples reported the second-highest rate of discrimination at 53.0% (Environics Institute & Canadian Race Relations Foundation, 2019). Compared to 2009, Environics Institute et al. (2016) found an increased number of Canadians believe Indigenous peoples experience discrimination in Canada. However, the proportion of respondents expressing negative views toward Indigenous peoples was unchanged. This may suggest that, although awareness of discrimination increased, the pervasiveness of stereotypes did not.

The stereotype content an in-group member applies to other social groups varies along two dimensions, according to Fiske et al.'s (2002) stereotype content model (SCM). One dimension is competence, which indicates an individual's capabilities, and the other is warmth, which indicates an individual's intent. Burkley et al. (2016) examined the SCM dimensions their American participants associated with stereotypes of Indigenous peoples. Nearly half were low competence, low warmth: uneducated, poor, lazy, alcoholic, savage, drug addicted, greedy, and unemployed. This combination is the most derogated, and such individuals are seen as low-status and parasitic, with an ill intent toward society coupled with a helpless incompetence (Fiske et al., 2002).

Some stereotypes were high competence, high warmth: eco-friendly, family oriented, wise elder, Indian princess, reservation resident, and simple (Burkley et al., 2002). It is understandable that these fell under the favourable combination given that, as noted by Burkley et al. (2016, p. 210), these are "noble" stereotypes that perpetuate positive images. The



remaining stereotypes were high competence, low warmth: red-skinned, casino operator, warrior, greedy, and fighter (Burkley et al., 2016). This combination indicates an individual is prosperous but ill-intentioned toward the in-group, and as such, is disliked and socially excluded (Fiske et al., 2002). Of note, no stereotypes were rated as low competence, high warmth, which typically evokes pity and sympathy (Burkley et al., 2016). This combination is seen as “neither inclined nor capable [of] harm[ing]” the in-group (Fiske et al., 2002, p. 879), which I believe may indicate why no Indigeneity stereotypes were categorised as such – i.e., Indigenous peoples are seen as a threat.

## **Defendant Race**

### *Aversive Racism*

Negative views about a racialized group may affect mock jurors’ decision-making when a defendant is racialized. Over time, it has become socially unacceptable to engage in or express overt forms of racism. However, this has not necessarily occurred in conjunction with a decrease in individuals’ racist beliefs (Kang et al., 2012). Rather, Gaertner and Dovidio (1986) argues that people may hold prejudiced beliefs while simultaneously providing outward support for egalitarian policies that promote racial equality. In fact, they defined aversive racism as the outward endorsement of racially egalitarian beliefs matched with inward, unacknowledged negative feelings toward racial groups. Such people may also sympathise with and recognise past injustices against racialized people, endorse liberal politics, and even perceive themselves as being non-prejudiced (Gaertner & Dovidio, 1986). However, the authors argue that, despite this perceived lack of prejudice, aversive racists do not genuinely hold positive feelings toward racialized people. They support egalitarianism and hold sympathy for disadvantaged groups, but these feelings are not accompanied by a respect toward racialized people (Gaertner & Dovidio,

1986). Though they do not hold hostility or hate, the authors argue that aversive racists' feelings of negativity include "discomfort, uneasiness, disgust, and sometimes fear" (Gaertner & Dovidio, 1986, p. 63), which result in avoiding contact with these groups. There are several contributors to the formation of aversive racism, including psychological and cognitive factors (e.g., biases created by information-processing, lack of exposure to members of other racial groups), motivational factors (e.g., gaining self-esteem from perceiving oneself to hold a superior status), and sociocultural factors (e.g., desire to maintain a status quo that privileges one's own racial group, negative stereotypes perpetuated in the media; Gaertner & Dovidio, 1986).

Because their ostensible support for egalitarianism is important to their identity, aversive racists are generally unaware of their own negative beliefs (Gaertner & Dovidio, 1986).

Therefore, in a situation where their negative attitudes may be exposed, aversive racists may react by 1) emphasising their egalitarian beliefs and non-prejudiced values, or 2) by expressing their racist attitudes in indirect, justifiable ways (Gaertner & Dovidio, 1986). In terms of the latter, aversive racists may express or act upon negative inclinations toward racialized people so long as these words or behaviours can be attributed to non-racial elements. In the context of a criminal trial, jurors with aversive racism may endorse harsher punishments toward a racialized defendant than they would a White defendant. However, by attributing this harshness to the defendant's criminal act and not their race, it is seemingly justified.

The norms guiding a particular situation may further affect the expression of aversive forms of racism. As per Gaertner and Dovidio (1986), White people are less likely to act discriminatorily against racialized people when well-defined norms are present. In contrast, conflicting situations with no well-defined norms allow for racist behaviours due to the ambiguity. In terms of a criminal trial, this type of situation may be presented by ambiguous

evidence. As predicted by Kalven and Zeisel's (1966) liberation hypothesis, weak, conflicting, or otherwise doubtful evidence liberates jurors, such that their decision-making can be guided by personal sentiment. Consequently, jurors who hold aversively racist beliefs may feel freed to interpret ambiguous evidence as inculpatory if the defendant is racialized.

### ***Mock Jury Studies***

Similar to empirical examinations of gender bias in mock juror decision-making, Canadian studies of race have yielded mixed findings. Some studies have found that race did not affect mock jurors' verdicts, but there were other race-related results. Ewanation and Maeder (2018) found no significant main effect of defendant race on jurors' dichotomous verdicts when examining two charges: failure to stop at the scene of an accident and dangerous driving. However, participants who believed Indigenous peoples are more commonly stereotyped as criminals in Canadian society were actually less likely to convict an Indigenous defendant. Studies by Pfeifer and Ogloff (2003), Clow et al. (2013), and Maeder et al. (2015a) examined sexual assault cases and found no differences in guilty verdicts for White and Indigenous defendants. However, when controlling for victim race, Pfeifer and Ogloff (2003) found that mock jurors' perceptions of guilt was significantly higher for Indigenous defendants compared to French- or English-Canadian defendants. Clow et al. (2013) found women mock jurors returned guilty verdicts for Indigenous defendants more often, and for Maeder et al. (2015a), participants who returned a guilty verdict recommended harsher sentences for Indigenous defendants than for White or Black defendants.

By contrast, other studies have found an influence of race on verdicts. In a test of race-crime congruency (i.e., whether a crime is congruent or incongruent with stereotypes of a defendant's race), Maeder et al. (2016) found that guilty verdicts did not differ for White

defendants across three crime-types: fraud, auto theft, and dangerous operation of a vehicle while intoxicated. But for Indigenous defendants, guilty verdicts did significantly differ across crime-type, such that they received more guilty verdicts for auto thefts but even amounts of guilty and not-guilty verdicts for fraud. Defendant race also affected jurors' attributions of stability, such that a White defendant was perceived as having higher stability in his criminal behaviour than an Indigenous defendant (contrary to predictions), and race alone did not affect blameworthiness. Although continuous verdict ratings did not differ in Maeder and Burdett's (2013) study, Indigenous defendants received more guilty verdicts than did White defendants.

Finally, some studies have found race-related effects when examining race salience (i.e., the extent to which racial issues are made apparent and/or important). Maeder et al. (2015b) ran two experiments and found that when racial issues were not made salient, there were no differences in guilty verdicts between White and Indigenous defendants or Black and Indigenous defendants. However, when race was made prominently salient, Indigenous defendants received significantly more guilty verdicts than White defendants. In another study of defendant race and race salience, McManus et al. (2018) did not find a significant relationship between these factors and verdict decisions for the charges examined, dangerous operation of a motor vehicle (DOM) and impaired driving. However, in terms of sentencing for DOM only, the Indigenous defendant received harsher sentences from mock jurors when race was made salient. In an examination of defendant race, juror race, and jurors' personally held stereotypes, Maeder and Yamamoto (2019) found that negative personal stereotypes about the defendant's race did not affect guilt determinations for a White, Black, or Indigenous defendant charged with DOM and impaired driving. However, positive personal stereotypes did affect White mock jurors' judgments of an Indigenous defendant, such that they were less likely to return a guilty verdict. When the authors

examined jurors' *perceptions* of race salience, they found that jurors who read about a White or Indigenous defendant were equally likely to feel that racial issues did not play a prominent role in the trial.

It is worth noting that nearly all the above studies (save for Ewanation & Maeder, 2018; Maeder & Yamamoto, 2019; McManus et al., 2018) used undergraduate students for their samples. Former chair of the Truth and Reconciliation Commission Justice and member of the Ojibwe First Nation, Murray Sinclair, stated in an interview with Mansbridge (2015) that public education of children has perpetuated the idea that Indigenous peoples are savages and inferior to Whites settlers. There has also been a failure in incorporating curricula on residential schools. In a survey of over 400 Albertans, the Canadian Race Relations Foundation et al. (2021) found only 28% were aware that many Indigenous children died in residential schools. Fifty-nine percent believed children do not learn enough about residential schools, and 69% believed curricula tends to play-down or understate the realities of residential schools. This suggests that those with secondary education at most are less likely to know about colonialism and residential schools. In addition, higher educational attainment is associated with decreased stereotypical attitudes and increased perceptions of discrimination against racialized groups, especially for White individuals (Wodtke, 2012). Altogether, it is possible that more punitive race-based verdicts toward Indigenous defendants would be found using general Canadian samples rather than solely undergraduate students, as this would allow for greater variability in educational attainment.

Although it is important to examine both defendant gender and race, the separation of these variables across studies may not reveal the full extent of biases that influence jurors' decision-making. In fact, the interaction between a defendant's gender and race may result in unique consequences that cannot be measured by gender or race alone.

## **Intersectionality**

When describing the marginalisation of racialized women, Crenshaw (1989) argued that the tendency to separate race and gender in discourses of discrimination critically ignored the experiences of Black women. Rather, the juncture of multiple marginalised identities produces intensified negative consequences, a phenomenon she called intersectionality. Because Black women are marginalised by two identities – their gender and their race – they subsequently suffer social consequences that are “greater than the sum of racism and sexism” experienced by Black men and White women (Crenshaw, 1989, p. 140).

There are several ways through which intersectionality arises. For example, there is structural-dynamic discrimination (Crenshaw, 2012), which points to the dynamic relationships between societal structures that hierarchically categorise individuals based on their gender and race. In combination, these structures have the most profound negative effects on racialized women. I would propose the child welfare and criminal justice systems are examples of such societal structures. The child welfare system is structured around entrenched societal expectations that disproportionately burden mothers, but not fathers, with responsibility for child-rearing. There is also evidence of racialised hierarchical categorisation, given the overrepresentation of investigated Indigenous families and children placed in care (Crowe & Schiffer, 2021). When a racialized mother is brought to court as a consequence of alleged child maltreatment, she is subjected to a secondary structure that disproportionately incarcerates racialized peoples, thereby exacerbating the negative effects of the child welfare system.

Another contributing factor to intersectionality is what Crenshaw (2012, p. 1427) referred to as “discursive intersections.” When research and discourse focus on gender or race alone, they create and reinforce the invisibility of racialized women. Crenshaw’s (2012) example is as

follows: attention given to racialized men results in research, knowledge, and awareness about their marginalisation, thereby omitting the marginalisation of racialized women. Because there is then a lack of research, knowledge, and awareness about racialized women, this perpetuates a misinformed perception that racialized women are not marginalised. But again, this lack of information about the marginalisation of racialized women only occurs because of an initial focus on racialized men.

Though Crenshaw originally highlighted Black American women, understandings and applications of intersectionality have since expanded to include multiple other marginalised groups across several countries (Carbado et al., 2013). In Canada, intersectionality can be seen contemporarily in the experiences of Indigenous women. Though both Indigenous men and women face stereotyping and other negative social consequences, Wilson (2018) argues that the devaluation of Indigenous women through stereotyping is so deeply ingrained in Canadian society, it has resulted in their fundamental dehumanisation. This dehumanisation of Indigenous girls and women is evidenced by their over-representation as victims of violent crime, lack of concern from law enforcement, and mistreatment by the courts (Wilson, 2018). To illustrate, Indigenous females are victims of violence at higher rates than both Indigenous males and non-Indigenous females (Boyce, 2016). Compared to other populations, hate crimes against Indigenous peoples (and Muslims) were more likely to involve women (Moreau, 2020).

The General Social Survey on Victimization (GSS) in Canada includes data on various factors that place an individual at higher risk of victimisation, including age, drug/alcohol use, mental health issues, experiences of child maltreatment, and history of homelessness. When these factors were controlled for, using data from 2014 and 2019 respectively, Perrault (2015) and Cotter (2021) found that ethnicity did not increase the risk of victimisation for Indigenous

peoples. In other words, Indigenous peoples overall were not at risk of victimisation due to their ethnicity alone. Rather, these other characteristics raised their risk. However, after controlling for these same factors for Indigenous women only, Perrault (2015) found that they were still at risk of violent victimisation due to their ethnicity. This means that, even after accounting for the influence of other characteristics that raise individuals' risk of victimisation, Indigenous women were still at risk due to their ethnicity alone. Unfortunately, Cotter (2021) did not carry out this gender-based analysis using the more recent GSS data, so it is unknown whether this pattern has changed.

The intensified negative consequences of intersectionality remain when Indigenous women are incarcerated. For example, Indigenous women have been held in remand and provincial/territorial custody at higher rates than Indigenous men for every year from 1998 to 2008 (Perrault, 2009). While Indigenous peoples who are involved in the justice system are over-represented in incarcerations overall, this issue is exacerbated for Indigenous women. Indigenous men represent 4.8% of all Canadian men but 28.6% of men in federal custody (Malakieh, 2020; Statistics Canada, 2018b). Indigenous women account for 4.9% of all Canadian women but an alarming 50.0% of women in federal custody (Statistics Canada, 2018b; Zinger, 2022, as cited in White, 2022). As noted by Crenshaw (2012), although there is a greater understanding of the role discrimination plays in the disproportionate incarceration of racialized groups, a lack of attention is given to racialized women in particular.

Roberts (2012, p. 1475) argued that the prison system and the child welfare system “work together to punish [B]lack mothers” and by doing so, reinforce and justify social inequalities based on race, gender, and class. The focus on women in particular is because they are seen “as the incubators of Black pathology” (Crenshaw, 2012, p. 1441) – interrupting reproduction and



child-rearing, responsibilities stereotypically assigned to women and mothers, presumably curtails this population. I would argue this structural-dynamic intersectionality similarly applies to and punishes Indigenous mothers. When Indigenous women are disproportionately targeted by these two systems, Indigenous families are fractured and separated by the removal of children and/or imprisonment of mothers. These outcomes, in turn, serve to further the on-going cultural genocide of Indigenous peoples by impairing their ability to pass on their cultures, traditions, and languages through generations. Simultaneously reinforced and justified are stereotypes that cast Indigenous peoples as criminals and poor parents who are incapable of caring for themselves and their children without intervention from White settlers.

As the issue of incarcerations has been discussed, I will also highlight statistics regarding the intersectionality of Indigenous mothers in child welfare investigations. Of the 258,830 Indigenous children who lived with a lone parent during Canada's latest census, 79.5% lived with a lone female parent (Statistics Canada, 2018a). It is important to note that 79.0% of Indigenous child welfare investigations involve a mother as a primary caregiver (only 10.0% involve a father as a primary caregiver) and, as previously mentioned, Indigenous families are more frequently investigated and their cases are more often referred to court (Crowe & Schiffer, 2021). As reported by Lavergne et al. (2008), a biological mother was the presumed perpetrator in just under half of physical abuse reports for Indigenous children, although the gender of the presumed perpetrator was not included for other forms of maltreatment, such as neglect.

Overall, when Indigenous child maltreatment cases are taken to court, the defendant parent is more likely to be a mother. Although all mothers may be subject to gender-based biases, Indigenous mothers are particularly vulnerable in court outcomes due to the negative consequences of intersectionality. Burgess-Proctor (2006) argued the necessity of adopting an

intersectional perspective when studying gender and criminology: by recognising multiple “locations of inequality” (p. 28), it is possible to understand power relationships that differentially affect individuals based on their social location rather than essentialising experiences (e.g., assuming all women are marginalised in the same way, regardless of race). By examining an Indigenous or White mother or father, we can better understand how individuals across these race and gender groups experience discrimination or privilege in the context of this study (Carbado et al., 2013). Therefore, mock jurors’ judgments of Indigenous mothers, compared to White mothers and Indigenous fathers, were of particular interest in the current study. Altogether, current evidence suggests that gender, gendered behaviour, and race may act as extralegal factors that influence jurors’ verdict decisions in criminal trials.

### **Purpose and Hypotheses**

The purpose of the current study was to investigate the effects of a defendant’s gender (man or woman), gendered behaviour (permissible/impermissible), and race (Indigenous or White) on mock jurors’ decision-making in a case of child neglect perpetrated by a parent. It is pertinent to examine these factors in the context of a crime against a child, given that such a crime may evoke gender- and race-based biases. For example, mothers are stereotypically assigned greater responsibility for childcare (Haines et al., 2016). Neglect specifically was selected given it is the second most common form of child maltreatment reported in the FN/CIS-2019 across all substantiated cases of maltreatment, and the most common form perpetrated against Indigenous children specifically (Fallon et al., 2021). In addition, neglect can be perpetrated by a single parent, which is important to pinpointing potential biases regarding an individual parent’s gender and race. Although exposure to intimate partner violence is the most common form of child maltreatment overall (Fallon et al., 2021), this may be complicated by

biases regarding the other partner.

### ***Hypothesis 1***

I predicted a main effect of gender, such that mothers would receive more guilty verdicts than fathers. Archival data on gender bias in incarcerations and mock jury studies are inconclusive (i.e., showing leniency toward women, no gender differences, or harshness toward women). However, in the context of a child neglect case, mothers may be perceived as more culpable because of societal expectations that purport maternal instincts makes them more capable of and responsible for childcare than fathers (Cowdery & Knudson-Martin, 2005; Haines et al., 2016; Ridgeway, 2011).

### ***Hypothesis 2***

I predicted a main effect of gendered behaviour, such that defendants who engaged in socially-impermissible behaviours would receive more guilty verdicts, regardless of gender. Individuals who violate expectations by engaging in socially-impermissible behaviours receive punishments, such as social censure (Prentice & Carranza, 2002). Even though this behaviour is legally irrelevant to the crime of child neglect, I believed it would affect mock jurors' judgments in a similar way.

### ***Hypothesis 3***

I predicted a main effect of race, such that Indigenous defendants would receive more guilty verdicts than White defendants. The over-representation of Indigenous peoples who are incarcerated has only grown since 2000 (Zinger, 2020). I believed that mock jurors' decision-making may be influenced by racial stereotypes that present Indigenous peoples as, for example, addicts, alcoholics, poor, and unskilled at parenting (Environics Institute et al., 2016; Erhart & Hall, 2019; Haddock et al., 1994; Morrison et al., 2008; Pfeifer & Ogloff, 2003; TRC, 2015).

#### ***Hypothesis 4***

I predicted a two-way interaction of gender and gendered behaviour, such that mothers who engaged in impermissible gendered behaviour would receive more guilty verdicts. Although both men and women are punished for socially-impermissible behaviour, the evil woman hypothesis suggests this may be worse for women. Evidence suggests that women who are accused of a crime and also violate gender norms are subject to harsher punishments as a way of sanctioning both their crime and their gender violation (Crawford & Bradley, 2016; Grabe et al., 2006; Koons-Witt et al., 2014; Roberts & Boyce, 2021).

#### ***Hypothesis 5***

I predicted a two-way interaction of gender and race, such that Indigenous mothers would receive more guilty verdicts than other gender/race conditions. Due to intersectionality, women who are racialized suffer intensified negative consequences from holding multiple marginalised identities (Crenshaw, 1989). For example, Indigenous women are incarcerated at higher rates than Indigenous men in Canada (Malakieh, 2020; Perrault, 2009). As such, I believed an Indigenous mother would receive harsher judgments than an Indigenous father and a White father or mother.

#### ***Hypothesis 6***

I predicted a three-way interaction between these variables, such that Indigenous mothers who engaged in impermissible gendered behaviour would receive the highest proportion of guilty verdicts. In this case, the aforementioned punitiveness of intersectionality against Indigenous mothers should be exacerbated by the additional engagement in behaviours deemed socially-impermissible for women.

#### ***Hypothesis 7***

I predicted that gender stereotypes would moderate the relationship between defendant gender and mock juror verdicts. Mock jurors rated various gender-stereotypic adjectives (based on the work of Hentshel et al., 2019) on their applicability to the defendant using a Likert scale ( $1 = \text{not at all}$ ;  $7 = \text{very much}$ ). I believed mock jurors who rated a defendant as having no or little gender-stereotypic qualities (e.g., lacking compassion for a mother; lacking emotional stability for a father) would be harsher as compared to mock jurors who provided higher ratings in these qualities.

### ***Hypothesis 8***

Finally, I predicted that racial stereotypes would moderate the relationship between defendant race and mock juror verdicts. Mock jurors rated various Indigenous-stereotypic adjectives (based on the work of Morrison et al., 2008) on their applicability to the defendant using a Likert scale ( $1 = \text{not at all}$ ;  $7 = \text{very much}$ ). I believed mock jurors who rated a defendant as high in Indigenous-stereotypic qualities (e.g., poor, welfare dependent) would be harsher as compared to mock jurors who provided lower ratings in these qualities.

## **Method**

### **Participants**

Four hundred and one Canadian participants (men = 151, women = 240, non-binary = 8) were recruited using Prolific Academic for the final sample. The age range of participants was 18 to 74 years ( $M = 32.14$ ,  $SD = 11.45$ ). Participants self-identified as White (60.4%), Chinese (17.0%), South Asian (6.7%), Black (4.5%), Filipino (4.5%), Southeast Asian (2.0%), Korean (2.0%), Arab (1.5%), Indigenous (1.5%), Latin American (1.5%), West Asian (1.0%), and Japanese (0.2%)<sup>3</sup>. For education, 2 completed some high school, 40 had a high school

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<sup>3</sup> Participants were able to self-identify as more than one race/ethnicity

diploma/GED, 41 completed vocational/technical school, 76 completed some university, 179 had a Bachelor's degree, 56 had a Master's degree, and 7 had a Doctoral degree. Two hundred and thirty-nine self-identified as having no religious affiliation, 106 as Christian, 13 as Muslim, 8 as Buddhist, 6 as Hindu, 5 as Jewish, and 5 as Sikh. In terms of political affiliation, 129 self-identified with the New Democratic Party, 115 with the Liberal Party, 33 with the Conservative Party, 14 with the Green Party, 1 with the Bloc Quebecois, and 22 as other or no affiliation.

In terms of national representativeness, 50.4% of Canadians are female (Milan, 2015) and 0.1% are non-binary (Statistics Canada, 2021a). Both of these rates are slightly lower than this study's sample, which had 59.9% women and 2.0% non-binary participants. The average age of Canadians (41.10) is higher than this sample (Statistics Canada, 2021b). For ethnicity, the 2016 census (Statistics Canada, 2021c) reported approximately<sup>4</sup> 72.8% of Canadians are White, 5.6% South Asian, 4.9% Indigenous, 4.6% Chinese, 3.5% Black, 2.3% Filipino, 1.3% Latin American, 1.5% Arab, 0.9% Southeast Asian, 0.8% West Asian, 0.5% Korean, and 0.3% Japanese. The ethnic representativeness was as follows: White was the most under-represented (by 12.4%); Indigenous was slightly under-represented (by 3.4%); Chinese was the most over-represented (by 12.4%); Filipino and Latin American was slightly over-represented (by 2.2% and 1.5%, respectively); and the other ethnicities were equal or close to (i.e., within 1.1%) the general population. Although the ethnic composition of the mock jury does not fully align with the population, Canadian juries tend to be less diverse than the population and lack representativeness (Abdigir et al., 2018; Iacobucci, 2013; Peterson, 1993).

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<sup>4</sup> In total, 77.7% of Canadians self-identified as not belonging to a visible minority. The term 'visible minority,' as per the census (Statistics Canada, 2021c), excludes Indigenous peoples, people who are Caucasian in race, and people who are White in colour. Therefore, I subtracted the total number of Canadians who self-identified as Indigenous (4.9%) from the total number of Canadians who self-identified as not belonging to a visible minority (77.7%) to find an approximation of the number of White Canadians (72.8%).

Prolific Academic is an online platform used to recruit participants for research surveys. Users are at least 18 years of age and come from a wide range of backgrounds (e.g., from countries around the globe, with no formal education up to a doctorate degree, and of various political and religious affiliations; Prolific, 2021). Researchers can pre-screen their desired demographics (Canadian nationality and English-speaking for the purposes of this study) to ensure the targeted sample is recruited. Participants were also screened for jury eligibility (see Appendix A), specifically that they are Canadian citizens; not employed in any disqualifying occupations (e.g., police officer); that they are able to read, write, and understand English; and that they have not been convicted of an indictable offence for which they did not receive a formal record suspension.<sup>5</sup> In accordance with Prolific guidelines, each participant was compensated \$3.25 USD for a thirty-minute session.

The sample size was based on an a priori power analysis with 80% power using the “pwr2ppl” package in R (Aberson, 2021). I was adequately powered to detect main effects and two-way interactions of the categorical predictors that have odds ratios of 3.78 or higher, and effects of the continuous moderators that have odds ratios of 0.50 or higher. To illustrate, if the odds of a defendant being convicted are 3.78 times higher for an Indigenous woman than an Indigenous man, I had adequate power to detect this.

## **Materials**

### ***Mock Trial Transcript***

All participants read one of eight versions of a trial transcript involving a case of child neglect allegedly perpetrated by the child’s mother or father (see Appendix B). The parent, the

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<sup>5</sup> 28 participants did not meet the eligibility criteria. 16 were not Canadian citizens, 10 were employed or licensed in an ineligible field, and 2 were convicted of an indictable offence without a formal record suspension. There were no differences in analyses run with or without these participants, and so they were retained for statistical power.

accused, was charged with failure to provide the necessities of life for a dependent under the age of 16 years without lawful excuse (*Criminal Code*, 1985, s. 215) and criminal negligence causing bodily harm (s. 221(b)). The accused brought his/her child to an emergency room, where the child was diagnosed as suffering from stage three of septic shock. The child underwent several intensive treatments, and ultimately recovered. The transcript included testimonies from an emergency room doctor who treated the child, a social worker who spoke to the accused, and a police officer who visited the accused's home.

The trial transcript was adapted from the facts of the case *R v. Clark* (2019), in which a mother and father were convicted by a jury of charges under s. 215 and s. 221(b). Three alterations from the original case were made for the mock trial: 1) the victim (child) did not die of staphylococcal septicemia; 2) the accused was a single parent; and 3) a social worker spoke to the accused at the hospital. The transcript included opening and closing judicial instructions adapted from NJI (2014). The specific charges of the case, including instructions on deciding whether the Crown proved the accused's guilt beyond a reasonable doubt, were adapted from *R v. A.S.* (2020), *R v. Naglik* (1993), and *R v. Lovett* (2017) for s. 215 and NJI (2014) and *R v. Lovett* (2017) for s. 221(b).

The transcripts were identical aside from the manipulation of the accused's gender (mother or father) and race (Indigenous or White). For gender, the accused was referred to as the victim's "mother" or "father" throughout the transcript. The accused's first name was one traditionally given to women or men (i.e., "Lorna" for the women conditions and "Ray" for the men conditions). For race, a statement at the start of the transcript described the defendant as Indigenous or White and race was also briefly mentioned in the police officer's testimony. In the Indigenous conditions, the defendant's surname was "Maasewigan," which is Anishinaabe



(Theriault, 2017). In the White conditions, the defendant's surname was "Thompson," which is a popular Canadian surname (Forebears, 2021) with origins from the United Kingdom (SurnameDB, 2017).

The design originally included gendered behaviour as an additional variable, which would have been manipulated as either permissible or impermissible for the defendant's gender as per Prentice and Carranza (2002). Based on the findings of the pilot study, detailed below, this manipulation was eliminated from the main study.

## **Measures**

### ***Dichotomous Verdict***

Participants returned a dichotomous verdict of guilty or not guilty for each charge (see Appendix C).

### ***Defendant Attributes***

Participants were given a 42-word adjective checklist and asked to indicate the degree to which each word applied to the defendant using a Likert scale (1 = *not at all* and 7 = *very much*; see Appendix D). The words related to gender stereotypes or race/Indigeneity stereotypes.

The gender stereotype adjectives were adapted from Hentshel et al.'s (2019) measures of agency, traits stereotypically assigned to men, and measures of communality, traits stereotypically assigned to women. Using gender stereotypes from previous literature (including Broverman et al., 1972; Diekmens & Eagly, 2000; and Oswald & Lindstedt, 2006, as cited in Hentshel et al., 2019), the authors used independent raters and a confirmatory factor analysis to create a total of seven scales measuring dimensions of agency and communality, all with acceptable Cronbach alphas. For agency, these dimensions included instrumental competence ( $\alpha = 0.88$ ), leadership competence ( $\alpha = 0.80$ ), assertiveness ( $\alpha = 0.80$ ), and independence ( $\alpha = 0.82$ ).

For communality, these included concern for others ( $\alpha = 0.91$ ), sociability ( $\alpha = 0.77$ ), and emotional sensitivity ( $\alpha = 0.75$ ).

The Indigeneity stereotype adjectives (e.g., welfare dependent, criminal, alcoholic) were adapted from Morrison et al.'s (2008) Cultural Stereotype Checklist (CSC). The CSC was created using previous measurements of stereotypes regarding marginalised groups (including Devine & Elliot, 1995; Madon, 1997; and Madon et al., 2001, as cited in Morrison et al., 2008). The current study used the 10 highest-rated stereotypes from the CSC, as reported by Morrison et al.'s (2008) 289 Canadian participants.

### ***Attention and Manipulation Checks***

Participants completed attention and manipulation checks (see Appendices D and F, respectively). For the manipulation checks, participants had to correctly identify the defendant's gender and race. The data from participants who failed the attention checks and/or the manipulation checks for gender or race were excluded from the analyses. This ensured the final sample included quality data from participants to whom the manipulations were salient. For example, if a participant did not notice the defendant's race, their verdicts were necessarily not affected by this manipulation.

Of the 477 participants recruited in total, 71 failed attention and/or manipulation checks and 5 withdrew, leaving a final sample of 401.

### **Procedure**

Participants were recruited for a 30-minute online study using Prolific Academic. Each participant first provided informed consent, then completed a screening for jury eligibility in Canada (see Appendix A). Participants were randomly assigned to read one of eight mock trial transcripts depicting a case of child neglect allegedly perpetrated by a parent. After reading the

transcript, participants returned a verdict of guilty or not guilty for each of the two charges. Participants provided demographic information (e.g., parental status, race, religion; see Appendix E), the race categories of which followed the Canadian census' options for population group and Aboriginal group (Statistics Canada, 2017). Participants completed the attention and manipulation checks, and then were debriefed on the study's true purpose and consented to submitting their data.

### **Pilot Study**

A pilot study was conducted to assess two concerns: first, whether the gendered behaviour manipulation was salient to participants; and second, whether the legally-relevant information provided in the transcript resulted in a relatively even verdict split, thereby avoiding a ceiling or floor effect (i.e., participants overwhelmingly providing a guilty or not guilty verdict). A ceiling effect would suggest the evidence is so overwhelming the defendant would likely plead guilty, whereas a floor effect would suggest the case would not go to trial because of a lack of evidence; both outcomes would reduce the ecological validity of the study. In addition, either a ceiling or floor effect would prevent me from seeing the effects of the main study's manipulations (i.e., the defendant's characteristics), which would affect the study's internal validity.

If a dramatic imbalance had been found (i.e., more than 70% of verdicts were guilty or not guilty), the transcript would have been altered using participants' verdict justifications until an approximately even verdict split for each charge was reached.

The pilot study used 40 undergraduate students enrolled in a psychology course at Carleton University. Participants received 0.25% credits toward a course for taking part in the

study, which was conducted entirely online via SONA and was estimated to take 15 minutes to complete.

The trial transcript used in this pilot study included the same information as the main study but represented a control condition of the main study: there was only one condition, in which the victim's father was the accused (see Appendix G). This gender condition was not anticipated to generate a biased response from participants. After reading the transcript, participants provided a verdict and brief justification for each of the two charges (see Appendix H).

To pilot the gendered behaviours, participants were given a list of Prentice and Carranza's (2002) permissible and impermissible gendered behaviour (see Appendix I). Using bipolar scales, they rated whether each behaviour was 1) permissible or impermissible for a man or a woman; and 2) positively or negatively valenced. For permissibility, they rated each behaviour on a scale from 1 (impermissible) to 9 (permissible) for a man and for a woman separately. They rated the valence of each of these behaviours for a general Canadian (i.e., non-gendered) from 1 (negative) to 9 (positive).

The results showed that 64.7% voted guilty for the first charge, failure to provide the necessities of life, and 67.6% voted guilty for the second charge, criminal negligence causing bodily harm. Because this was a relatively even verdict split, no alterations were made to the transcript.

Assessing the ratings of gendered behaviours on the 9-point Likert scales, a score of 5 represented a neutral point, a score of 6 or above was permissible or positively-valenced, and a score of 4 or below was impermissible or negatively-valenced. Of the 45 behaviours, 33 were deemed permissible for men and 38 for women. Twelve behaviours were rated as neutral for men

and 6 for women. Only one behaviour scored in an impermissible range: aggressive, which received an average score of 3.82 for women. In terms of valence, 29 behaviours were deemed positive for a general Canadian and 14 neutral. Two were deemed negative: aggressive (average score of 3.82) and arrogant (average score of 3.85). Given these findings, it was not possible to assign permissible and impermissible behaviours to both gender conditions and thus the manipulation was removed from the main study. For a full list of all gendered behaviours and ratings, see Appendix J.

## Results

Table 1 displays the means and standard deviations of participants' ratings for the gender and race stereotype adjectives, separated by defendant gender and race.

**Table 1**

*Mean Stereotype Adjective Ratings by Defendant Gender and Race*

| Stereotype Adjective  | White Mother |           | White Father |           | Indigenous Mother |           | Indigenous Father |           |
|-----------------------|--------------|-----------|--------------|-----------|-------------------|-----------|-------------------|-----------|
|                       | <i>M</i>     | <i>SD</i> | <i>M</i>     | <i>SD</i> | <i>M</i>          | <i>SD</i> | <i>M</i>          | <i>SD</i> |
| Gender (Feminine)     |              |           |              |           |                   |           |                   |           |
| Compassionate         | 4.13         | 1.40      | 4.47         | 1.45      | 4.60              | 1.39      | 4.78              | 1.36      |
| Kind                  | 3.78         | 1.27      | 4.18         | 1.20      | 4.31              | 1.13      | 4.50              | 1.21      |
| Understanding         | 3.57         | 1.19      | 3.77         | 1.33      | 4.04              | 1.18      | 4.16              | 1.21      |
| Emotional             | 4.07         | 1.36      | 4.11         | 1.42      | 4.33              | 1.41      | 4.25              | 1.27      |
| Collaborative         | 3.18         | 1.24      | 3.36         | 1.59      | 3.93              | 1.33      | 3.56              | 1.36      |
| Likeable              | 3.21         | 1.28      | 3.68         | 1.30      | 4.00              | 1.32      | 4.22              | 1.38      |
| Communicative         | 3.48         | 1.35      | 4.12         | 1.44      | 4.18              | 1.32      | 3.96              | 1.34      |
| Sympathetic           | 3.39         | 1.33      | 3.88         | 1.49      | 4.17              | 1.37      | 4.14              | 1.24      |
| Intuitive             | 2.86         | 1.45      | 3.23         | 1.47      | 3.43              | 1.46      | 3.54              | 1.41      |
| Sentimental           | 3.41         | 1.22      | 3.48         | 1.37      | 3.74              | 1.39      | 3.91              | 1.37      |
| Relationship-oriented | 3.22         | 1.35      | 3.55         | 1.39      | 3.78              | 1.39      | 4.09              | 1.44      |

| Stereotype Adjective      | White Mother |      | White Father |      | Indigenous Mother |      | Indigenous Father |      |
|---------------------------|--------------|------|--------------|------|-------------------|------|-------------------|------|
| <u>Gender (Masculine)</u> |              |      |              |      |                   |      |                   |      |
| Aggressive                | 2.07         | 1.14 | 1.97         | 1.17 | 1.81              | 1.11 | 1.79              | 1.02 |
| Desires responsibility    | 3.79         | 1.42 | 4.20         | 1.42 | 4.15              | 1.37 | 4.29              | 1.34 |
| Dominant                  | 3.02         | 1.39 | 3.15         | 1.26 | 2.75              | 1.26 | 3.04              | 1.14 |
| Achievement-oriented      | 2.72         | 1.25 | 2.92         | 1.33 | 2.76              | 1.26 | 3.06              | 1.30 |
| Competitive               | 2.48         | 1.36 | 2.54         | 1.21 | 2.42              | 1.18 | 2.66              | 1.33 |
| Emotionally stable        | 3.31         | 1.29 | 4.08         | 1.23 | 4.05              | 1.34 | 4.11              | 1.28 |
| Bold                      | 2.98         | 1.27 | 2.97         | 1.34 | 2.82              | 1.48 | 2.96              | 1.25 |
| Competent                 | 3.20         | 1.51 | 3.71         | 1.45 | 3.91              | 1.48 | 3.88              | 1.50 |
| Self-reliant              | 4.30         | 1.51 | 4.81         | 1.53 | 4.76              | 1.64 | 5.06              | 1.41 |
| Effective                 | 2.69         | 1.21 | 3.19         | 1.28 | 3.49              | 1.42 | 3.65              | 1.31 |
| Leadership ability        | 2.56         | 1.23 | 2.96         | 1.24 | 3.16              | 1.29 | 3.10              | 1.19 |
| Assertive                 | 2.71         | 1.30 | 2.96         | 1.26 | 3.08              | 1.31 | 3.03              | 1.16 |
| Skilled in business       | 2.47         | 1.25 | 2.98         | 1.29 | 2.73              | 1.28 | 2.90              | 1.18 |
| Task-oriented             | 2.97         | 1.30 | 3.41         | 1.40 | 3.12              | 1.34 | 3.46              | 1.29 |
| Independent               | 4.17         | 1.58 | 4.84         | 1.50 | 4.64              | 1.49 | 4.98              | 1.44 |
| Productive                | 3.19         | 1.41 | 3.24         | 1.41 | 3.43              | 1.46 | 3.62              | 1.33 |
| <u>Indigeneity</u>        |              |      |              |      |                   |      |                   |      |
| Uneducated                | 4.53         | 1.60 | 4.09         | 1.62 | 4.31              | 1.67 | 4.10              | 1.84 |
| Spiritual                 | 3.95         | 1.65 | 3.52         | 1.61 | 4.06              | 1.67 | 4.16              | 1.61 |
| Physically dirty          | 1.73         | 1.11 | 1.62         | 1.03 | 1.73              | 1.37 | 1.68              | 1.10 |
| Bad parent                | 3.88         | 1.69 | 3.22         | 1.55 | 3.03              | 1.73 | 3.10              | 1.61 |
| Poor                      | 2.97         | 1.45 | 2.60         | 1.41 | 3.20              | 1.67 | 3.11              | 1.64 |
| Welfare dependent         | 2.81         | 1.44 | 2.24         | 1.33 | 2.77              | 1.64 | 2.72              | 1.67 |
| Lazy                      | 2.75         | 1.56 | 2.46         | 1.33 | 2.45              | 1.59 | 2.44              | 1.43 |
| Criminal                  | 2.58         | 1.59 | 2.32         | 1.25 | 2.05              | 1.42 | 2.07              | 1.16 |

| Stereotype Adjective | White  |        | White  |        | Indigenous |        | Indigenous |        |
|----------------------|--------|--------|--------|--------|------------|--------|------------|--------|
|                      | Mother | Father | Mother | Father | Mother     | Father | Mother     | Father |
| Undisciplined        | 3.18   | 1.77   | 2.82   | 1.67   | 2.55       | 1.66   | 2.87       | 1.50   |
| Violent              | 1.81   | 1.11   | 1.64   | 0.96   | 1.63       | 1.12   | 1.58       | 0.91   |
| Abusive              | 2.74   | 1.54   | 2.27   | 1.32   | 2.06       | 1.48   | 2.32       | 1.44   |
| Alcoholic            | 1.82   | 1.22   | 3.55   | 1.09   | 1.69       | 1.18   | 1.90       | 1.26   |
| Sexually easy        | 2.09   | 1.32   | 2.11   | 1.26   | 1.83       | 1.34   | 1.97       | 1.21   |
| Dangerous            | 3.09   | 1.70   | 2.56   | 1.44   | 2.28       | 1.46   | 2.49       | 1.49   |
| Child-like           | 3.04   | 1.48   | 2.77   | 1.47   | 2.53       | 1.53   | 2.54       | 1.46   |

## Exploratory Factor Analysis

### *Gender and Indigeneity Scales*

An exploratory factor analysis (EFA) was used to analyse the underlying factors in the adjective checklist in the statistical software jamovi (The jamovi project, 2021). The data met all relevant assumptions (i.e., normality, linearity, and homoscedasticity), which were examined in R (R Code Team, 2021). Bartlett's test of sphericity indicated correlation adequacy,  $\chi^2(861) = 10234.55, p < .001$ , and Kaiser-Meyer-Olkin's (KMO) measure indicated sampling adequacy,  $MSA = 0.94$  (Field et al., 2012).

Theory suggested two overall factors (i.e., gender and Indigeneity), and an examination of the scree plot suggested two to four overall factors. Based on this, a two-factor model was tested with oblimin rotation. Factor 1 included 18 items that measured gender-based stereotypes and accounted for 24.96% of the variance in the set of items. Factor 2 included 14 items that measured Indigeneity stereotypes and accounted for 20.20% of the variance. The gender adjective list included both masculine and feminine adjectives, and participants were expected to rate the defendant as high on one and low on the other depending on the gender condition (e.g., rate a woman defendant as high on feminine adjectives and low on masculine adjectives). To

account for this, masculine adjectives were initially reverse-coded. However, this caused the masculine adjectives to load onto the first factor negatively. Taking this into account, it appeared Factor 1 reflected positively-valenced adjectives and Factor 2 reflected negatively-valenced adjectives.

A series of analyses of variance (ANOVA) with Bonferroni correction tested whether there were significant differences in how participants rated a defendant on the gender- and race-based adjectives. The full results can be seen in Appendix K. Of note, only 30 adjectives had a significant main effect or interaction, and many of the significant results were unexpected. As an example of this unexpectedness, 18 adjectives had a significant effect of race; 14 were gender-based adjectives and of these, 8 had no significant effect of gender. In conjunction with the EFA, which indicated the adjectives were differentiated by positive/negative valence rather than gender/race, this suggested it was not appropriate to characterise these adjectives as relating to gender- and race-based stereotypes. Rather, they appeared to reflect participants' positive or negative impressions of the defendant.

### ***Defendant Impression Scale***

Based on the above findings, an additional EFA assessed whether the adjectives loaded onto a single factor measuring participants' impressions of the defendant. To address the positive/negative valence in the first EFA, the Factor 2 adjectives were reverse-coded. In the first round, five items did not load well and were eliminated. In the second round, one additional item was eliminated<sup>6</sup>. The final factor retained 36 items (see Table 2), with excellent reliability,  $\alpha = 0.95$ . For use as a moderator in the logistic regressions, the scale was mean-centred (A. Howard,

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<sup>6</sup> Items dropped from the first round: dominant, competitive, bold, spiritual, and poor. Item dropped from the second round: achievement-oriented.



personal communication, July 30, 2021).

**Table 2**

*Defendant Impressions Model Loadings*

| Adjective                     | Loading |
|-------------------------------|---------|
| Compassionate                 | 0.67    |
| Uneducated <sup>a</sup>       | 0.44    |
| Aggressive <sup>a</sup>       | 0.40    |
| Physically dirty <sup>a</sup> | 0.44    |
| Kind                          | 0.67    |
| Desires responsibility        | 0.65    |
| Understanding                 | 0.72    |
| Emotional                     | 0.47    |
| Collaborative                 | 0.50    |
| Lazy <sup>a</sup>             | 0.60    |
| Emotionally stable            | 0.68    |
| Criminal <sup>a</sup>         | 0.70    |
| Undisciplined <sup>a</sup>    | 0.63    |
| Violent <sup>a</sup>          | 0.48    |
| Competent                     | 0.74    |
| Bad parent                    | 0.77    |
| Self-reliant                  | 0.63    |
| Likeable                      | 0.81    |
| Effective                     | 0.72    |
| Welfare dependent             | 0.33    |
| Communicative                 | 0.71    |
| Leadership ability            | 0.63    |
| Assertive                     | 0.43    |

| Adjective               | Loading |
|-------------------------|---------|
| Sympathetic             | 0.73    |
| Skilled in business     | 0.36    |
| Abusive <sup>a</sup>    | 0.67    |
| Task-oriented           | 0.45    |
| Intuitive               | 0.58    |
| Independent             | 0.63    |
| Sexually easy           | 0.31    |
| Sentimental             | 0.55    |
| Relationship-oriented   | 0.57    |
| Alcoholic <sup>a</sup>  | 0.47    |
| Productive              | 0.53    |
| Dangerous <sup>a</sup>  | 0.68    |
| Child-like <sup>a</sup> | 0.35    |

<sup>a</sup> Denotes reverse-coded adjectives.

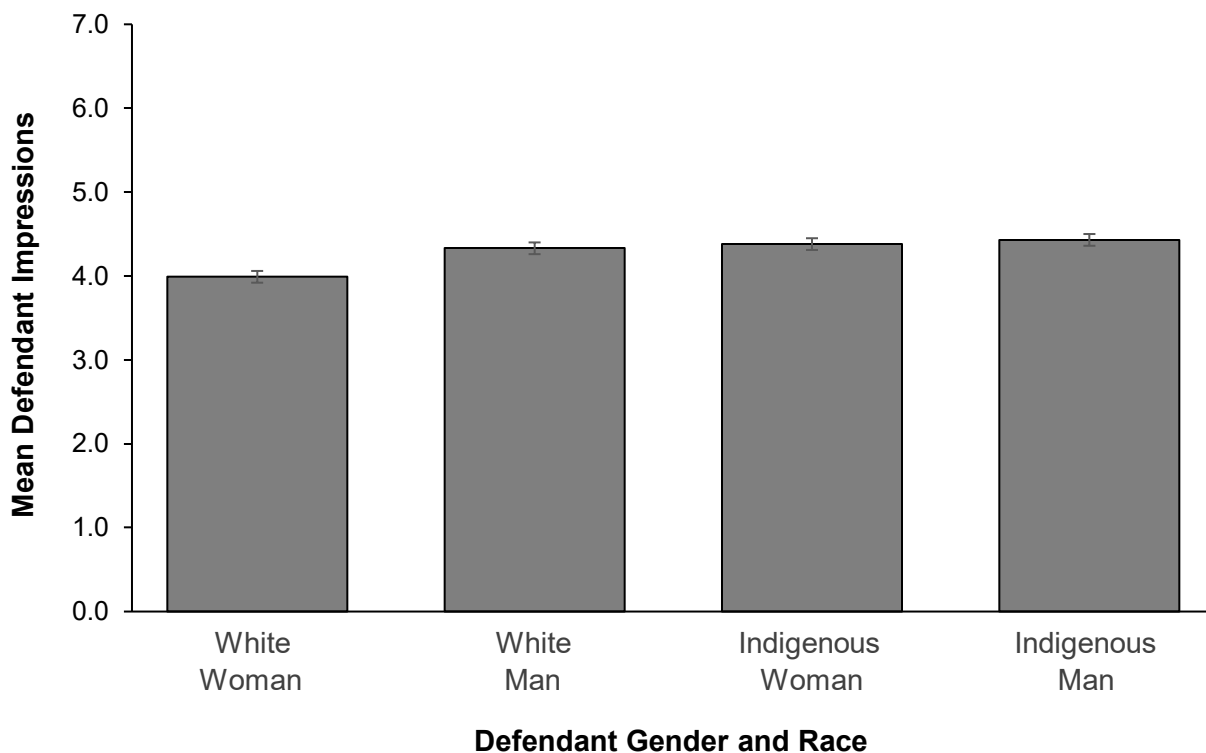
### Defendant Impressions

An a posteriori 2 (defendant gender: man, woman) x 2 (defendant race: Indigenous, White) ANOVA was run with defendant impressions as the dependent variable. The effect of the defendant's gender on participants' impressions of the defendant was significant,  $F(3,1) = 7.40$ ,  $p = .007$ , partial  $\eta^2 = .02$ . Participants perceived a woman more negatively ( $M = 4.18$ ,  $SD = 0.78$ ) than a man ( $M = 4.38$ ,  $SD = 0.68$ ). The effect of the defendant's race was also significant,  $F(3,1) = 11.42$ ,  $p < .001$ , partial  $\eta^2 = .03$ . Participants perceived a White defendant more negatively ( $M = 4.16$ ,  $SD = 0.71$ ) than an Indigenous defendant ( $M = 4.41$ ,  $SD = 0.75$ ). These were qualified by a significant gender-race interaction,  $F(3,1) = 3.87$ ,  $p = .05$ ,  $\eta^2 = .01$ . Post-hoc analysis with Bonferroni correction revealed that a White woman ( $M = 3.99$ ,  $SD = 0.72$ ) was perceived more

negatively than all three other groups: a White man ( $M = 4.33$ ,  $SD = 0.66$ ),  $t(198) = 3.31$ ,  $p = .006$ ,  $d = .47$ ; an Indigenous woman ( $M = 4.38$ ,  $SD = 0.79$ ),  $t(202) = 4.35$ ,  $p < .001$ ,  $d = .61$ ; and an Indigenous man ( $M = 4.43$ ,  $SD = 0.71$ ),  $t(197) = 3.77$ ,  $p = .001$ ,  $d = .53$ . These differences can be seen in Figure 1.

**Figure 1**

*Mean Defendant Impressions by Defendant Gender and Race*



*Note.* Error bars represent standard error.

### **Dichotomous Verdict**

Two logistic regression analyses were conducted in jamovi (The jamovi project, 2021) to investigate whether gender and race predicted each verdict. For gender, man was coded as 0 (the reference category) and woman was coded as 1. For race, White was coded as 0 and Indigenous was coded as 1. Finally, for dichotomous verdict, not guilty was coded as 0 and guilty was coded as 1.

The first model for each verdict included only the main effects (i.e., gender and race). The second model for each verdict included the main effects, the two-way gender-race interaction, and the defendant impressions scale as a moderator for gender and for race, separately. By comparing these models, I predicted the second model would have an increased explanatory power.

At each step, Chi-Square statistics tested whether a significant improvement was made in the model's fit by comparing each model to the previous one (i.e., whether model 1 was better at predicting verdict compared to a null model with no predictors and whether model 2 was better at predicting verdict compared to model 1). Nagelkerke's R-Squared was used for a pseudo-R squared measure of goodness of fit (Field et al., 2012).

### ***Failure to Provide Necessaries of Life***

For the first charge, a total of 83 (20.7%) participants voted guilty and 318 (79.3%) voted not guilty. Table 3 displays the verdict counts and percentages for each condition.

The results of the logistic regression can be seen in Table 4. For Step 1, Chi-Square analyses showed that including gender and race produced a significant improvement in the model's fit of model 1,  $\chi^2(2) = 6.98, p = .031, R^2 = 0.03$ . Defendant race was the only significant predictor of verdict. With an odds ratio of 0.55 ( $CI = 0.34, 0.91$ ), the odds of a guilty verdict were lower for an Indigenous defendant than a White defendant.

For Step 2, Chi-Square analyses showed that adding the interaction and moderators produced a significant improvement in the model's fit,  $\chi^2(3) = 105.68, p = < .001, R^2 = 0.38$ . The defendant impressions scale significantly moderated the effect of defendant gender on verdict. With an odds ratio of 0.13 ( $CI = 0.06, 0.31$ ), the odds of a woman defendant being found guilty was lower when participants had high (i.e., positive) impressions of her.

**Table 3***Verdict Counts and Percentages for Failure to Provide Necessaries of Life*

| Defendant Gender | Defendant Race | Verdict                 |                        |                |
|------------------|----------------|-------------------------|------------------------|----------------|
|                  |                | Not Guilty              | Guilty                 | Total          |
| Man              | White          | <i>n</i> = 79<br>79.8%  | <i>n</i> = 20<br>20.2% | <i>n</i> = 99  |
|                  | Indigenous     | <i>n</i> = 86<br>83.5%  | <i>n</i> = 17<br>16.5% | <i>n</i> = 103 |
| Woman            | White          | <i>n</i> = 70<br>69.3%  | <i>n</i> = 31<br>30.7% | <i>n</i> = 101 |
|                  | Indigenous     | <i>n</i> = 83<br>84.7%  | <i>n</i> = 15<br>15.3% | <i>n</i> = 98  |
| Total            |                | <i>n</i> = 318<br>79.3% | <i>n</i> = 83<br>20.7% | <i>N</i> = 401 |

**Table 4***Summary of Coefficients for Logistic Regression on Verdicts for Failure to Provide the Necessaries of Life*

| Predictor        | B     | SE   | <i>p</i> | OR   |
|------------------|-------|------|----------|------|
| Step 1           |       |      |          |      |
| Defendant Gender | 0.29  | 0.25 | .250     | 1.33 |
| Defendant Race   | -0.59 | 0.25 | .020     | 0.55 |

| Predictor  | B     | SE   | <i>p</i> | OR   |
|--|-------|------|----------|------|
| <b>Step 2</b>                                      |       |      |          |      |
| Defendant Gender                                   | 0.04  | 0.44 | .933     | 1.04 |
| Defendant Race                                     | -0.28 | 0.46 | .544     | 0.76 |
| Defendant Gender X Defendant Race                  | -0.38 | 0.61 | 0.535    | 0.68 |
| Defendant Gender X Defendant Impressions Moderator | -2.01 | 0.42 | <.001    | 0.13 |
| Defendant Race X Defendant Impressions Moderator   | -0.31 | 0.54 | 0.569    | 0.74 |

### ***Criminal Negligence***

For the second charge, a total of 101 (25.3%) participants voted guilty and 299 (74.8%) voted not guilty. Table 5 displays the verdict counts and percentages for each condition.

The results of the logistic regression can be seen in Table 6. For Step 1, Chi-Square analyses showed that including gender and race produced a significant improvement in the model's fit 1,  $\chi^2(2) = 7.42, p = .024, R^2 = 0.03$ . Defendant race was the only significant predictor of verdict. With an odds ratio of 0.56 ( $CI = 0.36, 0.89$ ), the odds of a guilty verdict were lower for an Indigenous defendant than a White defendant.

For Step 2, Chi-Square analyses showed that adding the interaction and moderators produced a significant improvement in the model's fit,  $\chi^2(3) = 83.50, p = < .001, R^2 = 0.30$ . The defendant impressions scale significantly moderated the effect of defendant gender on verdict. With an odds ratio of 0.16 ( $CI = 0.08, 0.33$ ), the odds of a woman defendant being found guilty was lower when participants had high impressions of her.

### **Table 5**

#### *Verdict Counts and Percentages for Criminal Negligence Causing Bodily Harm*

| Defendant Gender | Defendant Race | Verdict            |                     |           |
|------------------|----------------|--------------------|---------------------|-----------|
|                  |                | Not Guilty         | Guilty              | Total     |
| Man              | White          | $n = 75$<br>75.6%  | $n = 24$<br>24.2%   | $n = 99$  |
|                  | Indigenous     | $n = 81$<br>78.6%  | $n = 22$<br>21.4%   | $n = 103$ |
| Woman            | White          | $n = 63$<br>63.0%  | $n = 37$<br>37.0%   | $n = 100$ |
|                  | Indigenous     | $n = 80$<br>81.6%  | $n = 18$<br>18.4%   | $n = 98$  |
| Total            |                | $n = 299$<br>74.8% | $n = 101$<br>25.3 % | $N = 400$ |

**Table 6**

*Summary of Coefficients for Logistic Regression on Verdicts for Criminal Negligence Causing Bodily Harm*

| Predictor        | B     | SE   | $p$  | OR   |
|------------------|-------|------|------|------|
| Step 1           |       |      |      |      |
| Defendant Gender | 0.26  | 0.23 | .262 | 1.30 |
| Defendant Race   | -0.57 | 0.23 | .014 | 0.56 |

| Predictor  | B     | SE   | <i>p</i> | OR   |
|--|-------|------|----------|------|
| Step 2   |       |      |          |      |
| Defendant Gender                                   | 0.13  | 0.35 | .729     | 1.14 |
| Defendant Race                                     | -0.02 | 0.38 | .956     | 0.98 |
| Defendant Gender X Defendant Race                  | -0.51 | 0.54 | .339     | 0.60 |
| Defendant Gender X Defendant Impressions Moderator | -1.85 | 0.37 | <.001    | 0.16 |
| Defendant Race X Defendant Impressions Moderator   | 0.25  | 0.44 | .564     | 1.29 |

### Discussion

This study examined whether mock jurors' verdicts in child neglect trials are influenced by a defendant's gender and/or race. Race had an unpredicted influence on verdicts for both charges, however, gender alone and the gender-race interaction did not directly influence verdicts. Defendant impressions moderated the influence of gender on verdicts, but not race. For both charges, mock jurors were less likely to find a woman guilty when they had positive impressions of her.

### Pilot Study

The pilot study did not support Prentice and Carranza's (2002) framework of gendered behaviour. This is an area of theory worth further examination, as societal standards of what behaviours are permissible and impermissible for men and women may have changed over the past two decades. I previously used Prentice and Carranza's (2002) framework in my honours thesis (Roberts & Boyce, 2021) and found an interaction between defendant gender and gendered behaviour, such that mothers with impermissible gendered behaviour were perceived as significantly guiltier of child neglect. However, it was not possible to gauge the reliability and



potential extent of such an effect in this study.

Continuing with the pilot study, the verdict results drastically differed from the main study. Specifically, 64.7% of pilot study participants voted guilty for the first charge (i.e., failure to provide the necessities of life) and 67.7% voted guilty for the second charge (i.e., criminal negligence). In contrast, 20.7% of participants in the main study voted guilty for the first charge and 25.3% for the second charge. Although the pilot study used a neutral condition (i.e., a father with no explicitly mentioned race), this difference is unlikely to be caused by the manipulations in the main study. Of the 202 participants who were exposed to a father (Indigenous or White) in the main study, 18.3% and 22.8% voted guilty for each charge, respectively.

The difference in verdicts may suggest a discrepancy between how undergraduate students and the general Canadian population interpret criminal trials, evidence, and the legal standard of guilt. The pilot study did not gather demographic information, so unfortunately it is not possible to compare gender, age, ethnicity, or political affiliation between the samples. As discussed by Sivasubramaniam et al. (2020), student samples have previously been found to provide verdicts that are more lenient (e.g., Berman & Cutler, 1996) or more punitive (e.g., Neuschatz et al., 2008) than community samples. In combination with the discrepancies found in the current study, this indicates potential problems with generalisability when students are used to replace community samples.

### **Defendant Impressions**

Similar to the pilot-tested gendered behaviour measure, the scales of gender- and race-based stereotype adjectives did not work as predicted. Rather than consisting of two separate scales for each category, the adjectives formed a single scale that more accurately represented defendant impressions. This unexpected finding may be due to how the question for this measure

was worded. I provided participants with a list of adjectives and asked them to “Please rate the extent to which each word describes the defendant” (see Appendix D). In contrast, other studies commonly ask participants about personal or cultural stereotypes. For an example of a personal stereotypes measure, Maeder and Yamamoto (2019) asked participants to indicate the degree to which 20 traits were reflective of their personal stereotypes towards a defendant’s racial group. For an example of a cultural stereotype measure, Ewanation and Maeder (2018) asked participants to indicate the degree to which several criminality-related words represented the cultural stereotypes of Indigenous and White Canadians.

Maeder and McManus (2020) highlighted concerns with personal and cultural stereotype measures. Asking participants to rate their own personal stereotypes of men/women and Indigenous peoples may affect honesty and result in socially-desirable responses. On the other hand, asking about cultural stereotypes does not necessarily align with personal belief in those stereotypes but rather an awareness or acknowledgment of racial issues. For example, Ewanation and Maeder (2018) found participants who believed that Canadian culture negatively stereotypes Indigenous peoples were more lenient toward an Indigenous defendant.

In an attempt to avoid these issues, I asked participants to rate the defendant on the various adjectives without stating these adjectives were gender- and race-based stereotypes. However, participants did not respond to the scales as stereotype measures. Further consideration must be given to accurate measures that can assess the intended construct (i.e., stereotype rating) while avoiding or minimising the aforementioned concerns with personal and cultural stereotype questions.

## **Defendant Gender**

Women were hypothesised to receive more guilty verdicts in this study because previous literature indicated that mothers were believed to be inherently more capable of and responsible for childcare than fathers (Haines et al., 2016; Ridgeway, 2011). This hypothesised harshness toward women defendants was not supported, as women were not significantly more likely to be found guilty for either charge. Coupled with the null findings in the pilot study regarding permissible/impermissible gendered behaviours, the lack of verdict effects may indicate that gender stereotypes are no longer as salient compared to when such previous research (e.g., Haines et al., 2016; Ridgeway, 2011) was conducted. It is also possible the content of such stereotypes has changed and requires review. If such beliefs are actually less common in current times, child neglect would not be perceived as a gender violation for women and therefore, the evil woman hypothesis would not apply. However, Haines et al. (2016) offers a recent review which shows gender stereotypes of men and women are largely unchanged since 1983. It is unlikely that the salience and content of such stereotypes, which have persisted for over 30 years, drastically changed in the past eight years. Furthermore, the finding that mock jurors held a more negative impression of a woman defendant overall, discussed below, also suggests such gender stereotypes remain.

The lack of difference in verdicts between men and women defendants in this study is complicated by other gender-based findings across verdict and defendant impressions that show leniency and harshness towards women, respectively. Mock jurors' impressions of the defendant significantly moderated the relationship between gender and verdict, such that mock jurors with positive impressions of a woman defendant were less likely to find her guilty. The defendant impressions assessed by the scale in this study (e.g., likability, skill in business) are extralegal

factors that mock jurors are not supposed to consider in their verdict. In fact, jurors (including the mock jurors in this study) are instructed against allowing their verdict to be swayed by sympathy for or prejudice against any person involved in the trial, including the defendant (NJL, 2014; see Appendix B). This means that a juror's impression of a defendant, positive or negative, should not affect the outcome of a trial. Unfortunately, the ways we process and categorise information lead to the creation of stereotypes (Allport, 1954). These cognitive processes are unconscious, which means individuals can be biased without their awareness (Roberts, 2018). Due to this lack of awareness of their own personal (i.e., not legally relevant) impressions of the defendant, mock jurors may not have been able to prevent biases from influencing their verdict decisions.

In this study, mock jurors were steered toward leniency by their impressions of a defendant – leniency specifically afforded to a woman, but not a man, and only when they held positive impressions of her. This outcome aligns, somewhat, with the outcome predicted by the chivalry/paternalism hypothesis (i.e., leniency toward women defendants). However, the chivalry/paternalism hypothesis posits that women receive leniency because they are perceived as weak and needing protection. Such perceptions may not have necessarily driven mock jurors' leniency in this study. In addition, the majority of participants were women (59.9%). This suggests conceptualisations of leniency toward women defendants require consideration beyond chivalry and paternalism, which exclusively account for men's views of women.

Although positive impressions of a woman defendant steered mock jurors toward leniency for her, assessing differences in mock jurors' impressions by the defendant's gender revealed more negative impressions of a woman overall than a man. As discussed above, a woman defendant was not punished more harshly by the mock jurors, which was contrary to my

prediction and does not fully align with the evil women hypothesis. However, although their verdicts were not affected, mock jurors appeared to be influenced by gender stereotypes relating to motherhood: despite allegedly committing the same act of child neglect, a mother was perceived more negatively than a father. This suggests that gender stereotypes about parenting (e.g., mothers being naturally better parents) remain pervasive in Canadian society. Therefore, a mother who is a neglectful parent may be perceived as more violating than a father, and therefore be more vulnerable to negative impressions.

### **Defendant Race**

Contrary to the hypothesised association between defendant race and mock juror verdict, Indigenous defendants were less likely to receive a guilty verdict than White defendants. It is worth exploring whether this leniency may be related to an increased understanding by Canadians of the inequalities Indigenous peoples face.

In the spring and summer of 2021, Indigenous concerns in Canada came to the forefront of media attention after the remains of 200 Indigenous children were discovered in unmarked graves at the site of a former residential school in Kamloops, British Columbia (B.C.), which is located in Tk'emlúps te Secwépemc territory (Sterritt & Dickson, 2021). Horrifyingly, many more discoveries followed: 104 graves in Sioux Valley Dakota Nation, Manitoba (Froese, 2021); 751 graves in Cowessess First Nation, Saskatchewan (Eneas, 2021); 182 graves in Ktunaxa Nation, B.C. (Migdal, 2021); and 160 graves on Penelakut Island, B.C., which is part of the Penelakut First Nations Tribe (White, 2021). Excavations are ongoing, with 93 potential burials near the Williams Lake First Nation, B.C., discovered as recently as January 2022 (Lindsay & Watson, 2022). Following the first mass grave discovery at Kamloops, the National Day for Truth and Reconciliation was established by the Canadian government. This partly aligns with

Call to Action 80 of the TRC (2015). Although not a statutory holiday (contrary to the TRC's [2015] call), it is meant to encourage individuals to honour those affected by the residential school system (Government of Canada, 2021).

A survey by the Innovative Research Group (2021) suggests the mass grave discoveries changed Canada's social climate, with people gaining a better understanding of Indigenous peoples' historic and continued struggles. In 2007, only 52% of Canadians reported being aware of current Indigenous concerns, which dropped to 42% in 2015 (Innovative Research Group, 2021). In June 2021, this jumped to 75% in a sample of over 1,000 Canadians (Innovative Research Group, 2021). Seventy-seven percent were familiar with the discovery of children's graves in Kamloops, B.C., and 81% reported anger over how Indigenous peoples were treated in residential schools. Furthermore, 68% felt Canadians must work toward reducing the inequalities that affect Indigenous peoples.

Importantly, leniency toward Indigenous defendants is not supported in the justice system, which sees a continued 'Indigenization' (i.e., increase in the overincarceration of Indigenous peoples; Zinger, 2020). The most recent statistics regarding over-representation of Indigenous men in Canadian incarcerations (Zinger, 2020) was released before the discoveries of mass children's graves in spring 2021, however, the over-representation of Indigenous women has since increased. In fact, as of April 2022, Indigenous women now account for 50.0% of incarcerated women (Zinger, 2022, as cited in White, 2022) – a grievous trend about which Zinger (2021a) had previously warned the Government of Canada and the Correctional Service of Canada.

The discrepancy between the current study and these incarceration data suggests that, rather than a dramatic and positive shift in how Indigenous peoples are treated, participants in

this study may have provided socially-desirable responses. Because a trial offers conflicting and ambiguous evidence, it was predicted that mock jurors would be liberated from well-defined norms that condemn prejudice and discrimination against racialised individuals (Gaertner & Dovidio, 1986; Kalven & Zeisel, 1966). Instead, the findings may indicate participants were aware of the study's race manipulation and answered in socially desirable ways. Leniency toward an Indigenous defendant would avoid a socially-undesirable verdict and demonstrate conformity to social norms (Tourangeau & Yan, 2007).

On the other hand, it is worth noting that jury trials make up a very small percentage of criminal cases. In fact, approximately 90% of criminal cases in Canada are resolved through plea deals (Department of Justice, 2021b). It is possible that Canadians' awareness of the inequalities Indigenous peoples face in society has increased, as suggested by previously discussed survey research (Innovative Research Group, 2021). In this case, mock jurors' leniency toward an Indigenous defendant in the current study may have been driven by a desire to combat systemic inequalities against Indigenous peoples rather than driven by social desirability. Incarceration rates would not necessarily reflect such a change, given jurors are not decision-makers in the vast majority of criminal cases.

In fact, there are concerns of racial inequalities with plea bargaining, the method by which the majority of cases are decided. Carling (2017), a Métis lawyer, highlighted plea bargaining as a contributing factor to Indigenous peoples' over-representation in Canadian incarcerations. She cited Indigenous peoples' distrust in the justice system, desires to "get it over with" (TRC, 2015, as cited in Carling, 2017, p. 416), and lack of understanding of their rights; lack of Indigenous jurors and judges; and denial of bail for Indigenous peoples. There are also problems with communication, including language barriers, poor translations, and lack of inter-

cultural understanding by individuals working within the justice system (Carling, 2017). Many of these reasons were echoed by Bressan and Coady's (2017) investigation into why Indigenous peoples accused of crimes, including those who are innocent, may plead guilty. The authors additionally highlighted social vulnerabilities such as intergenerational trauma, poverty, homelessness, mental health issues, food insecurity, and/or substance abuse issues. In summary, the increasing overincarceration of Indigenous peoples in Canada does not necessarily contradict the leniency mock jurors displayed in the current study.

Moving onto defendant impressions, this did not moderate the relationship between defendant race and verdicts. Unlike a woman, an Indigenous defendant did not receive leniency when participants had positive impressions of him/her. As such, leniency toward Indigenous defendants did not depend on how positively or negatively the defendant was perceived. However, Indigenous defendants were perceived more positively than White defendants. Once again, this may indicate a positive change in attitudes towards Indigenous peoples or it may indicate social desirability, with participants reporting positive impressions of an Indigenous defendant to avoid being perceived as, or perceiving themselves as, biased against Indigenous peoples.

### **Intersectionality**

The predicted effect of intersectionality was not supported; specifically, Indigenous women were not more likely to be found guilty. However, examinations of real-life incarcerations show Indigenous women are incarcerated at even higher rates than Indigenous men (Malakieh, 2020; Perrault, 2009; Statistics Canada, 2018b). Although not reflected in the current study, it is clear Indigenous women who are involved in the justice system experience harsher treatment than Indigenous men and non-Indigenous men and women.



Defendant impressions reveal a White mother was perceived more negatively than an Indigenous woman and an Indigenous or White man. This may be an issue of a stereotype-inconsistency effect (Maeder & Hunt, 2011), such that child neglect may be viewed as consistent with Indigenous mother stereotypes but inconsistent with White mother stereotypes. There is evidence that stereotype-inconsistent information may be more influential on mock jurors than information that is stereotype-consistent. Maeder and Hunt (2011) tested the influence of positive and negative character evidence (i.e., testimony about a defendant's traits that are relevant to the accused crime) on Black and White defendants. They found that positive character evidence decreased guilty verdicts for Black defendants, whereas negative character evidence increased guilty verdicts for White defendants. The authors suggested this dual effect was due to stereotype-inconsistency: because Black individuals are stereotyped negatively, mock jurors paid more attention to positive information presented about a Black defendant; and because White individuals are stereotyped positively, mock jurors paid more attention to negative information presented about a White defendant (Maeder & Hunt, 2011).

Stereotypes about motherhood are positively-valenced, such as mothers being family-oriented (Haines et al., 2016) and devoted caregivers (Ridgeway, 2011). Although the cited research did not account for race-based differences, such stereotypes are unlikely to apply to all mothers equally. For example, Indigenous peoples are stereotyped as unfit (TRC, 2015) and bad (Morrison et al., 2008) parents. As a method of exerting control and supporting governmental interference in Indigenous peoples' autonomy and livelihood, colonialist views position Indigenous peoples as child-like and incapable of caring for themselves. Such paternalistic control has targeted Indigenous women in particular (Lawrence, 2003). When taken together, this suggests positively-valenced motherhood stereotypes do not apply to Indigenous mothers. In

fact, child neglect may be consistent with stereotypes for Indigenous mothers. Because stereotype-consistent information is not shocking and does not stand out to jurors, it may not influence their decisions. If child neglect is stereotype-consistent for Indigenous mothers and stereotype-inconsistent for White mothers, this may explain both why Indigenous mothers were not punished harshly by mock jurors and why mock jurors perceived a White woman more negatively.

### **Implications**

Given that juries are composed of laypersons who have their own interpretations and understandings of the law and court cases, the use of juries naturally creates disparity in the courts. However, this research suggests that families who are involved in the legal system because of child neglect may experience disparities due to legally irrelevant characteristics: specifically their race and, for women, jurors' impressions of them.

Women are hugely under-represented in Canadian incarcerations (CSC, 2019), yet in the current study, there were no statistically significant differences in guilty verdicts between men and women. In fact, a woman only received leniency if mock jurors held positive impressions of her. It is possible that, in trials for parent-perpetrated child maltreatment, jurors are susceptible to gender bias only for mothers whom they perceive positively. Fathers were neither advantaged nor disadvantaged by jurors' perceptions of them in this study, and mothers who were perceived negatively were treated similarly to fathers. As such, mothers who are on trial for child maltreatment may need to specifically attend to their presentation and the impressions they give to the jury in terms of their personality.

In the context of recent events, the wide-ranging consequences of residential schools and colonialism may be more present in Canadian minds. The current study's findings suggest jurors

may desire to treat Indigenous defendants with leniency, which could improve the experiences of Indigenous peoples who are involved in the justice system by reducing bias against them.

Unfortunately, this leniency is not reflected in the continued and growing overincarceration of Indigenous peoples (Zinger, 2020; Zinger, 2022, as cited in White, 2022). This is unsurprising, given this overincarceration has varied and wide-ranging causes and contributing factors.

Indigenous peoples point to, among others, plea bargaining, cultural genocide, assimilation, intergenerational trauma, over- and under-policing, and lack of culturally-relevant rehabilitation (Aboriginal Justice Implementation Commission, 1999; Carling, 2017; Ontario Human Rights Commission, 2003; TRC, 2015).

Indigenous women's recent increase to representing 50.0% of all incarcerated Canadian women (Zinger, 2022, as cited in White, 2022) does not align with the current study's non-significant verdict findings for the interaction of defendant race and gender. However, the findings that a White woman was perceived more negatively by mock jurors has important implications for Indigenous women's intersectionality. It suggests that positive stereotypes typically attributed to motherhood (e.g., being devoted caregivers; Ridgeway, 2011) are race-dependent and may apply to White mothers, but not Indigenous mothers. Although potentially stereotype-consistent information (i.e., an Indigenous mother accused of child neglect) did not elicit harsher punishments in mock jurors, such stereotype consistency may negatively affect the experiences of Indigenous mothers investigated for child welfare concerns. The child welfare system is a particular area of concern for intersectionality, and I previously proposed it is an example of Crenshaw's (2012) structural-dynamic discrimination, whereby individuals involved in this system are hierarchically categorised based on their gender and race. Indigenous peoples have stated negative stereotypes about their parenting affect families who are investigated for

child welfare (Lindstrom & Choate, 2016; TRC, 2015), and this study indirectly supports neglect being consistent with such stereotypes. With 79.0% of Indigenous child welfare investigations involving a mother as a primary caregiver (Crowe & Schiffer, 2021), these women suffer the consequences of a contradiction between societal expectations placing greater responsibility for childcare on mothers versus racial stereotypes that declare them unfit for parenting.

Attempts by the Canadian government to address the overincarceration of Indigenous peoples have failed or even backfired. *R v. Gladue* (1999) ruled that when sentencing, judges must consider the unique circumstances of Indigenous peoples, such as their experiences with residential schools (Department of Justice, 2017). This information is presented in Gladue Reports, which judges use to decide sentences that are appropriate for an Indigenous person's history and culture (Department of Justice, 2017). Instead of creating a greater understanding of the context of colonialism and encouraging judges to consider culturally-relevant approaches to justice, as intended (Department of Justice, 2017), Arndt (2022), a Mohawk woman and PhD candidate, states Gladue Reports may be misused as risk assessment tools. In fact, the information in these reports may be used as justification for incarcerating Indigenous peoples (Arndt, 2022).

Examining forty-two cases of Indigenous adult women involved in the justice system who used Gladue Reports from 2017-18, Baigent (2020) argued that judges commonly failed to consider Gladue Reports in their sentencing decisions. Over half of the cases involved first-time offenders, 86.0% of which received prison sentences. In two cases a healing lodge, a culturally-relevant alternative to prison, was recommended. In one case, a defendant's history of poverty and being trafficked for sex work was used against her to indicate a high-risk of re-offending (Baigent, 2020). However, this article had a very limited sample of cases with Gladue Reports

and given that judges are often limited in the number of viable alternatives to sentencing available, it is unclear whether judges, rather than failing to use Gladue Reports, were unable to recommend culturally-appropriate alternatives.

Efforts to resolve the issues Indigenous peoples face in the justice system are unlikely to succeed until Indigenous peoples' own perspectives, cultures, and traditions lead such efforts. One such example is Indigenous justice, which is an approach by Indigenous communities to promote healing for all parties involved in an offence, including the wrongdoer and those harmed (Mandamin, 2021). In order to restore harmony in the relationships between these parties, participation is voluntary. Mandamin, an Anishinaabe former Federal Court Justice, examined three successful Indigenous justice approaches by the Bigstone Cree Nation, the Tsuu T'ina Nation, and the Siksika Nation. Through his examination, he found all approaches had four common aspects, which he proposed must be present in Indigenous justice. These are as follows: 1) it is created and delivered by an Indigenous community; 2) it is based on the community's culture and experiences; 3) it engages with social disorder and the Canadian criminal justice system; and 4) it addresses social disorder in the community and the overincarceration of Indigenous peoples.

Of note, Indigenous justice is not limited to the criminal justice system, but can also include child welfare. For example, the Siksika Nation's approach expanded to Siksika Child and Family Services (Mandamin, 2021). Indigenous justice, as one example of Indigenous approaches to justice, may help both Indigenous peoples who are involved in the criminal justice system and Indigenous families who are involved in child welfare investigations.

## **Limitations and Future Directions**

Due to constraints relating to time, practicality, and budget, individual verdicts were used. Because jurors in real-life cases undergo group deliberations to come to a unanimous decision, the ecological validity of the findings are limited. In addition, participants in this study were aware the mock trial lacked consequentiality, i.e., they knew their decisions did not have consequences for a real-life case or defendant. However, the ecological validity was otherwise supported by the adaptation of an actual court case and the recruitment of Canadian adults from the general population. By administering the study online, data quality may have been negatively affected by the inability to control participants' environments or ensure participants paid full attention (Advisory Group on Conducting Research on the Internet, 2002). This was mitigated by using attention and manipulation checks to ensure the final sample paid attention to the survey.

I have found no data from Canada, the United States, or elsewhere that analysed conviction or sentencing rates by gender for crimes against children. Given that other such analyses have found leniency toward women is eliminated for other crimes that violate gender stereotypes for women (Johnston et al., 1987; Koons-Witt et al., 2014; Rodriguez et al., 2006), crimes against children may elicit a similar response. Such data would allow for a greater understanding of whether harshness toward defendants accused of child maltreatment based on gender exists. With the latest Canadian census data showing 80.38% of single-parent families are headed by a female parent (Statistics Canada, 2019), this possibility warrants further investigation.

As the overrepresentation in incarcerations of Indigenous persons, particularly Indigenous women, continues to climb, future research should focus on reducing and ultimately eliminating this overrepresentation. Unfortunately, this issue has only increased over the past

decades; therefore, it is fruitful to also examine ways to improve the experiences of incarcerated Indigenous people, focusing on areas of concern Indigenous peoples themselves have highlighted. Indigenous peoples who are incarcerated most frequently communicate to the Office of the Correctional Investigator (Zinger, 2021b) issues with conditions of confinement, staff, health care, and cell effects (e.g., canteens, search or seizure, and transfers). Incarcerated Indigenous women specifically have noted a lack of Indigenous staff and lack of access to culturally-relevant psychological services, activities, and rehabilitation, such as healing lodges (Zinger, 2021b).

## **Conclusion**

This study contributed to previous literature that suggests jurors' decision-making is influenced by extralegal factors. Defendant gender alone did not influence verdicts, however, mock jurors with positive impressions of a woman defendant were more lenient towards her. Contrary to the hypothesised effect of defendant race, mock jurors were lenient toward an Indigenous defendant. This may reflect a change in attitudes, with Canadians growing increasingly aware of the inequalities faced by Indigenous peoples, or it may indicate participants are commonly aware of racial manipulations and respond in socially-desirable ways. No evidence of an interaction between defendant race and gender was discovered; however, a White woman was perceived more negatively by mock jurors than all other gender-race conditions. This may suggest that positive stereotypes about motherhood apply to White, but not Indigenous, mothers, resulting in increased harshness when these stereotypes are perceived to have been violated.

## Appendix A

### Jury Eligibility Screening

Are you a Canadian citizen?

- Yes
- No

Are you employed or licensed in any of the following occupations? If not, please leave this question blank.

- Police officer
- Firefighter regularly employed by a fire department
- Superintendent, jailer, or keeper of a prison, correctional institution, or lockup
- Warden of a penitentiary
- Sheriff or a sheriff's office
- Armed forces personnel of the regular and special forces or member of the reserve forces on active service
- Lawyer (barrister or solicitor) or student-at-law
- Officer of a court of justice
- Judge or a justice of the peace
- Member of the Privy Council of Canada, the Executive Council of Ontario, the Senate, the House of Commons, or the Legislative Assembly of Ontario

Are you able to read, write, and understand the English language?

- Yes
- No



Have you ever been convicted of an indictable offense for which you did not receive a formal record suspension?

- Yes
- No

## **Appendix B**

### **Mock Trial Transcript**

#### **Victim**

Justin [Maasewigan/Thompson] is a fourteen-month-old boy from Ontario. He was allegedly neglected by his [mother/father], [Lorna/Ray] [Maasewigan/Thompson].

#### **Defendant**

[Lorna/Ray] [Maasewigan/Thompson] is a 30-year-old [Indigenous/White] [man/woman] from Ontario. [He/she] has been the sole caretaker of [his/her] son, Justin, for 12 months since [his/her] [husband/wife] passed away. [He/she] is accused of neglecting Justin.

#### **Judge's Opening Instructions**

You are the sole judge of the facts. I am the sole judge of the law, and it is your duty to accept the law as I explain it to you. You must not use your own ideas about what the law is or should be, or rely on information about the law from any other source. Your decision must be based only on the evidence presented in the courtroom. Keep an open mind as the evidence is being presented. Do not be influenced by sympathy for or prejudice against anyone.

[Mr/Ms] [Maasewigan/Thompson] enters the proceedings presumed to be innocent. There is no burden on [Mr/Ms] [Maasewigan/Thompson] to prove that [he/she] is innocent. The Crown bears the burden of proving guilt beyond a reasonable doubt.

A reasonable doubt is based on reason and common sense. It is not imaginary or frivolous, or based on sympathy for or prejudice against anyone involved in the proceedings.

You must decide, looking at the evidence as a whole, whether the Crown has proved [Mr/Ms] [Maasewigan/Thompson]'s guilt beyond a reasonable doubt. Do not find [Mr/Ms]

[Maasewigan/Thompson] guilty unless you are sure [he/she] is guilty. If you have a reasonable

doubt about [Mr/Ms] [Maasewigan/Thompson]'s guilt arising from the evidence, the absence of evidence, or the credibility or the reliability of one or more witness, you must find [Mr/Ms] [Maasewigan/Thompson] not guilty. If you believe that [Mr/Ms] [Maasewigan/Thompson] is probably or likely guilty, that is not sufficient beyond a reasonable doubt and you must find [Mr/Ms] [Maasewigan/Thompson] not guilty.

To help you follow the evidence in this case, I will describe the essential elements of the offence charged. After all of the evidence has been presented, I will give you complete instructions on the law that applies to these essential elements and to any other issues that you must consider. The first offence charged is one count of being without lawful excuse for failing to provide the necessaries of life to a dependent under the age of 16, contrary to s. 215. The charges in the indictment read as follows:

1. [Mr/Ms] [Maasewigan/Thompson] was under a legal duty to provide necessaries of life to Justin;
2. [Mr/Ms] [Maasewigan/Thompson] failed, without lawful excuse, to provide necessaries of life to Justin;
3. It was objectively foreseeable that [Mr/Ms] [Maasewigan/Thompson]'s failure was likely to lead to a risk of danger to Justin's life; and
4. [Mr/Ms] [Maasewigan/Thompson]'s failure to provide the necessaries of life was a marked departure from the conduct of a reasonable parent.

The second offence charged is one count of criminal negligence causing bodily harm, contrary to s. 221(b). The charge(s) in the indictment read as follows:

1. [Mr/Ms] [Maasewigan/Thompson] failed to obtain the necessary medical care for Justin;

2. In failing to obtain the necessary medical care for Justin, [Mr/Ms] [Maasewigan/Thompson] showed wanton or reckless disregard for the life or safety of Justin; and
3. [Mr/Ms] [Maasewigan/Thompson]'s conduct caused bodily harm to Justin.

### **Court Transcript**

**Crown Opening Statement:** The Crown will prove that [Mr/Ms] [Maasewigan/Thompson] disregarded the life and safety of [his/her] fourteen-month-old child, Justin. On the day of November 28, 2020, [Mr/Ms] [Maasewigan/Thompson] arrived at the Peterborough Regional Health Centre with Justin, who was suffering from septic shock. Justin is alive today thanks to the tireless work of the doctors and nurses who cared for him. Because [Mr/Ms] [Maasewigan/Thompson] failed in [his/her] [mother/father]ly duty to provide the necessities of life to Justin, [he/she] endangered Justin's life and caused Justin bodily harm. We will ask you to seek justice by finding [Mr/Ms] [Maasewigan/Thompson] guilty on both counts.

**Defence's Opening Statement:** Today I represent the defendant, [Mr/Ms] [Maasewigan/Thompson], who is wrongly accused of failing in [his/her] [mother/father]ly duties. That Justin suffered tragically from septic shock is not in question here. The Crown wants you to believe that my client knew Justin's health was in danger and chose not to seek medical treatment. In truth, [Mr/Ms] [Maasewigan/Thompson] is a devoted [mother/father] who brought [his/her] child to the hospital when [he/she] realized the severity of Justin's condition, just as any [mother/father] would. I will ask that you return a verdict of not guilty on both counts.

### **Dr. Beck, Sworn, Examined by the Crown**

**Crown:** Please state your full name and your affiliation with this case.

**Dr. Beck:** My name is Cameron Beck, and I was the attending pediatric physician in

Peterborough Regional Health Centre's emergency room when Justin arrived on November 28, 2020 at approximately 3:20 pm.

**Crown:** What happened when Justin entered the emergency room?

**Dr. Beck:** Justin arrived bundled up in multiple layers by his [mother/father] to keep him warm. I noticed immediately that he had abnormal, flaky, red and dry skin, which I believed was eczema. He had numerous open and weeping lesions, and his sparse hair and eyelashes were an orange-yellow colour. He was hypothermic, with a temperature of 30°C, and had a low heart rate of 78 beats per minute. His airway was clear and he was crying, which were good signs, and his pulse was low but regular.

**Crown:** What was your initial assessment, based on these symptoms?

**Dr. Beck:** I diagnosed him with the third stage of septic shock and knew that his life was in danger. A full-body examination revealed two toes on each foot were purple or black in colour, and no pulse could be detected in his right foot. His blood pressure was 102/86 and his breath was 32 breaths per minute. I estimated him to be about 10 kg. Justin suffered a seizure and cardiac arrest. I believe he may have experienced another seizure, but I could not confirm this because he had to be chemically paralyzed to facilitate treatment.

**Crown:** What did this treatment entail, exactly?

**Dr. Beck:** I used an intra-osseous line and an intravenous line for fluid resuscitation. We managed to warm Justin to approximately 36°C. I administered three broad-spectrum antibiotics, and medication for the seizure. He had to be placed on a ventilator. When Justin experienced a second cardiac arrest, we used several resuscitation measures and were able to recover Justin's heart rate. He was stable from that point forward.

**Crown:** Did anything stand out to you about Justin's condition or state?

**Dr. Beck:** Yes. Although I originally estimated Justin to be around 10 kg, which is in the normal range for a fourteen-month-old, he was actually between the 3rd and 15th percentile in weight. He was also below the 0.1 percentile in height for a child of his age and gender.

**Crown:** Were you able to determine how Justin became septic?

**Dr. Beck:** Yes. Justin had staphylococcal septicemia due to deficiency dermatitis, which was a consequence of malnutrition. In other words, Justin contracted a bacterial infection that entered his bloodstream as a result of a skin condition, which was necrolytic migratory erythema and not eczema. This is a very rare skin condition, and was caused by a nutritional deficiency.

**Crown:** How do you think Justin became nutritionally deficient?

**Dr. Beck:** By the time I saw Justin, he appeared malnourished. It is my belief that he did not receive adequate nutrition at home.

#### **Defence Cross Examines the Witness**

**Defence:** Dr. Beck, you stated that Justin's skin condition, which led to his bacterial infection, may have been caused by inadequate nutrition at home. Is there any other explanation for the origin of Justin's skin condition?

**Dr. Beck:** I cannot rule out the possibility that the malnutrition was due to a genetic abnormality that caused Justin to be malnourished, regardless of his diet and nutrition.

**Defence:** In fact, do you have any evidence to support your assertion that [Mr/Ms] [Maasewigan/Thompson] failed to provide Justin with adequate nutrition?

**Dr. Beck:** No, and I cannot speak to Justin's health before this event.

**Defence:** So to conclude, you cannot say whether Justin's malnutrition, that ultimately led to septic shock, was due to [Mr/Ms] [Maasewigan/Thompson] willfully depriving [his/her] child of adequate nutrition or due to a genetic abnormality?

**Dr. Beck:** No, I cannot.

**Defence:** You had a conversation with [Mr/Ms] [Maasewigan/Thompson] on the evening of November 28, 2020. Can you recount for the court this conversation?

**Dr. Beck:** Yes, I asked [Mr/Ms] [Maasewigan/Thompson] about Justin's development and symptoms prior to admission, which [he/she] willingly described. Justin was healthy with appropriate development until the last month. Although he was not yet walking or crawling, he jumped in his baby jumper, played with toys, smiled, and socially engaged with his family. Justin had long-term eczema, which [Mr/Ms] [Maasewigan/Thompson] treated with creams to no beneficial effect. [Mr/Ms] [Maasewigan/Thompson] struggled to answer questions about Justin's diet, particularly about what he was eating and in what quantities. Justin was still bottle-feeding, did not eat meat, obtained protein from yogurt and beans, and had a varied diet. In the last month, Justin had become less interested in eating. Days before admission to the hospital, he had been sleepier and cool, and [Mr/Ms] [Maasewigan/Thompson] bundled him up to keep him warm. [Mr/Ms] [Maasewigan/Thompson] first noticed the discolouration in Justin's toes was turning to black during a bath to warm him the morning of November 28, 2020, which prompted [Mr/Ms] [Maasewigan/Thompson] to take Justin to Peterborough Regional Health Centre later in the day.

**Defence:** Is there anything to suggest, as you can recall from your conversation, that [Mr/Ms] [Maasewigan/Thompson] was criminally negligent in [his/her] duties as a [mother/father] or failed to provide Justin with the necessities of life?

**Dr. Beck:** Well, as I recall, [Mr/Ms] [Maasewigan/Thompson] had difficulty telling me about Justin's eating habits. And [Mr/Ms] [Maasewigan/Thompson] admitted to seeing Justin's toes discolouring in the morning, but did not take him to the hospital until the afternoon.

**Defence:** In your experience, is it common for parents whose children are in life-threatening conditions to be overwhelmed, and struggle with answering even simple questions?

**Dr. Beck:** Yes, that does happen.

**Defence:** So, it is entirely possible that [Mr/Ms] [Maasewigan/Thompson] struggled to discuss Justin's eating habits with you, not because [he/she] was uncomfortable or unaware, but because [he/she] was distraught at the state of [his/her] child?

**Dr. Beck:** Yes, that is possible.

**Defence:** [Mr/Ms] [Maasewigan/Thompson] believed that Justin had suffered from eczema almost his entire life. Is it possible that [Mr/Ms] [Maasewigan/Thompson] thought Justin's discoloured toes were due to eczema, which is not a life-threatening condition, and that is why [he/she] did not bring Justin to the hospital immediately on the morning of date?

**Dr. Beck:** Yes. Eczema can cause hyperpigmentation, which is a darkening of the skin.

**Defence:** And you yourself initially misdiagnosed Justin's skin condition as eczema, is that correct?

**Dr. Beck:** That is correct.

### **Social Worker Alex Weaver, Sworn, Examined by the Defence**

**Defence:** Please state your full name for the court, and your affiliation with this case.

**Weaver:** My name is Alex Weaver. I am a social worker at Peterborough Regional Health Centre, and I provide support to patients and their families. In some cases, I may be assigned to a family to assess whether a child may have been abused or neglected. On November 28, 2020, I provided support to Justin's [mother/father] while Justin was in treatment.

**Defence:** Can you recall your conversation with [Mr/Ms] [Maasewigan/Thompson] that afternoon?



**Weaver:** Yes, though our conversation was brief. I explained who I was and why I was sent to speak with [him/her], and we discussed [his/her] son's current state. I gave [him/her] information on various resources the hospital had that might help and offered to stay with [him/her] for support.

**Defence:** You stated that you are sometimes assigned to cases at the hospital to assess whether a child has been maltreated. Was this the case for Justin?

**Weaver:** No. I visited with [Mr/Ms] [Maasewigan/Thompson] to offer any assistance I could as a social worker, but I was not assigned to Justin to assess any potential abuse or neglect.

**Defence:** At the time of your conversation with [Mr/Ms] [Maasewigan/Thompson] and based on your expertise as a child social worker, did you have any suspicion that Justin had been abused or neglected?

**Weaver:** No, I did not.

**Defence:** Did you follow the procedure for a case of suspected abuse or neglect by flagging the case to your supervisor?

**Weaver:** No, because I did not suspect any abuse or neglect.

### **Crown Cross Examines the Witness**

**Crown:** No questions for this witness, Your Honour.

### **Police Officer Morgan Reese, Sworn, Examined by the Crown**

**Crown:** Can you please state your name and occupation?

**Officer Reese:** My name is Morgan Reese and I am a police officer with the Ontario Provincial Police. I was the primary investigator in the [Lorna/Ray] [Maasewigan/Thompson] case.

**Crown:** I understand that [Mr/Ms] [Maasewigan/Thompson]'s laptop was seized. Did you find any evidence relevant to the case on [his/her] laptop, and if so, can you share with the court what

you found?

**Officer Reese:** There were several internet searches. On May 15, 2020: an image search for "[Indigenous/White] baby eczema." On May 22, 2020: "what causes infant eczema?" In June of 2020: "how an elimination diet cured my daughter's eczema." On October 20, 2020: "asthma-allergies-eczema." On November 13, 2020: "poor circulation in feet eczema in infant." On the evening of November 27, 2020: "natural cure for wet gangrene" and "can cabbage leaves cure gangrene?" On November 28, 2020, at 11:44 am: "gangrene cayenne as treatment."

**Crown:** Is there any evidence to suggest [Mr/Ms] [Maasewigan/Thompson] sought help for any of these symptoms?

**Officer Reese:** No, there is no evidence before November 28, 2020 that [Mr/Ms] [Maasewigan/Thompson] saw a doctor or any other medical professional for [his/her] son. Although the [Maasewigan/Thompson]'s residence is a thirty-minute drive to the hospital from their home, [Mr/Ms] [Maasewigan/Thompson] did not take [his/her] son until hours later.

### **Defence Cross Examines the Witness**

**Defence:** You visited the [Maasewigan/Thompson]'s residence as part of your investigation. How would you describe the home?

**Officer Reese:** The [Maasewigan/Thompson]'s duplex was clean. The kitchen was well-stocked with healthy, whole foods and home remedies. There were numerous books on parenting and health. There were appropriate safety precautions for young children, such as child-proof locks on cupboards and dangerous substances that were stored out of reach.

**Defence:** Did you find anything out of the ordinary that may suggest Justin had been deprived of nutrients or otherwise neglected?

**Officer Reese:** [Mr/Ms] [Maasewigan/Thompson] appeared to have no candy or other refined

sugar foods in the home.

**Defence:** Are you suggesting that a lack of sugar constitutes neglect?

**Officer Reese:** No, but it stood out. I think it's out of the ordinary.

**Defence:** So, based on your search of the [Maasewigan/Thompson]'s residence, it would appear that Justin had a safe environment where he was protected from potential hazards and provided with healthy foods and no refined sugars.

**Officer Reese:** Based on my search, yes, that appears to be the case.

**Crown closing statement:** [Mr/Ms] [Maasewigan/Thompson] was aware of Justin's skin condition for weeks, and on the morning of November 28, 2020, noticed Justin's toes turning black. By the time [Mr/Ms] [Maasewigan/Thompson] took Justin to the hospital, it was almost 4 pm and Justin was suffering from septic shock. Keeping your child away from refined sugars and using an organic diet cannot lead to this condition. [Mr/Ms] [Maasewigan/Thompson] failed in [his/her] [mother/father]ly duties to provide Justin with the necessities of life, and endangered little Justin's life. [Mr/Ms] [Maasewigan/Thompson] wantonly and recklessly disregarded Justin's safety and health, and acted in a criminally negligent way. [Mr/Ms] [Maasewigan/Thompson]'s conduct constituted a marked departure from the standard of a reasonably prudent [mother/father]. I urge you to do the right thing and find [Mr/Ms] [Maasewigan/Thompson] guilty on both counts.

**Defence closing statement:** [Mr/Ms] [Maasewigan/Thompson] is a caring, devoted [mother/father] who provided [his/her] son with a safe, child-proofed home and a healthy diet. The Crown suggests [Mr/Ms] [Maasewigan/Thompson] knowingly malnourished [his/her] son, but provide no evidence ruling out genetic abnormality as the cause of this malnourishment. A professional doctor, trained to work in emergency pediatrics, believed Justin's rash was eczema.

How can we hold a [mother/father] to a higher standard than a medical doctor? [Mr/Ms] [Maasewigan/Thompson] acted as any reasonable [mother/father] would, and brought Justin to the hospital when [he/she] realized it was not just a rash. Justin has already suffered enough; he does not need to suffer the loss or punishment of the only parent he has. You must find [Mr/Ms] [Maasewigan/Thompson] not guilty on both counts.

### **Judge's Closing Instructions**

It is your duty to decide whether the Crown has proved [Mr/Ms] [Maasewigan/Thompson]'s guilt beyond a reasonable doubt. It is not my role to express any view on the guilt or innocence of [Mr/Ms] [Maasewigan/Thompson]. You must make your decision on a rational, fair, and impartial consideration of all the evidence. Do not consider passion, or sympathy, or prejudice against the accused, the Crown, or anyone in the case. You may believe some, none, or all of the evidence given by a witness. If you have a reasonable doubt about [Mr/Ms] [Maasewigan/Thompson]'s guilt arising from the credibility of the witnesses, then you must find [Mr/Ms] [Maasewigan/Thompson] not guilty.

To decide whether the Crown has proved beyond a reasonable doubt that [Mr/Ms] [Maasewigan/Thompson] is guilty of being without lawful excuse for failing to provide the necessities of life (s. 215), consider the following questions:

1. Was [Mr/Ms] [Maasewigan/Thompson] under a legal duty to provide the necessities of life to Justin?
2. Did [Mr/Ms] [Maasewigan/Thompson] fail to provide Justin with the necessities of life, specifically medical attention?
3. Was it objectively foreseeable that this failure would likely lead to a risk of danger to Justin's life or cause his health to be endangered permanently?

4. Did [Mr/Ms] [Maasewigan/Thompson]'s conduct represent a marked departure from the conduct of a reasonably prudent parent?

Unless you are satisfied beyond a reasonable doubt that the Crown has proved all these essential elements, you must find [Mr/Ms] [Maasewigan/Thompson] not guilty on this count. If [Mr/Ms] [Maasewigan/Thompson] acted under an honest but mistaken belief that [his/her] conduct was not dangerous in the circumstances, you must find [Mr/Ms] [Maasewigan/Thompson] not guilty on this count. If you are satisfied beyond a reasonable doubt of all the above essential elements, you must find [Mr/Ms] [Maasewigan/Thompson] guilty on this count.

To decide whether the Crown has proved beyond a reasonable doubt that [Mr/Ms] [Maasewigan/Thompson] is guilty of criminal negligence causing bodily harm (s. 221(b)), consider the following questions:

1. Did [Mr/Ms] [Maasewigan/Thompson] fail to obtain the necessary medical care for Justin?
2. Did [Mr/Ms] [Maasewigan/Thompson] show a wanton or reckless disregard for the life or safety of Justin?
3. Did [Mr/Ms] [Maasewigan/Thompson]'s conduct cause Justin bodily harm?

Unless you are satisfied beyond a reasonable doubt that the Crown has proved all these essential elements, you must find [Mr/Ms] [Maasewigan/Thompson] not guilty on this count. If you are satisfied beyond a reasonable doubt of all these essential elements, you must find [Mr/Ms] [Maasewigan/Thompson] guilty on this count.

## Appendix C

### Verdict Questionnaire

Do you believe the defendant, [Lorna/Ray] [Maasewigan/Thompson], is **guilty of failure to provide the necessities of life for a dependent under the age of 16 years without lawful excuse**, under s. 215 of the Criminal Code?

- Yes
- No

Do you believe the defendant, [Lorna/Ray] [Maasewigan/Thompson], is **guilty of criminal negligence causing bodily harm**, under s. 221(b) of the Criminal Code?

- Yes
- No

## Appendix D

### Gender and Indigeneity Adjectives

Please rate the extent to which each word **describes the defendant**, [Lorna/Ray]

[Maasewigan/Thompson], from a scale of **1 (not at all)** to **7 (very much)**:

1. Compassionate
2. Uneducated
3. Spiritual
4. Aggressive
5. Physically dirty
6. Please select 2
7. Kind
8. Desires responsibility
9. Dominant
10. Understanding
11. Emotional
12. Bad parent
13. Collaborative
14. Poor
15. Welfare dependent
16. Lazy
17. Achievement-oriented
18. Competitive
19. Emotionally stable

20. Bold
21. Criminal
22. Undisciplined
23. Please select 6
24. Violent
25. Competent
26. Self-reliant
27. Likeable
28. Effective
29. Communicative
30. Leadership ability
31. Assertive
32. Sympathetic
33. Skilled in business matters
34. Abusive
35. Task-oriented
36. Intuitive
37. Independent
38. Sentimental
39. Relationship-oriented
40. Alcoholic
41. Productive
42. Sexually easy



43. Please select 5

44. Dangerous

45. Child-like

## Appendix E

### Demographic Questionnaire

Are you a parent?

- Yes
- No

What is your gender?

- Man
- Woman
- Trans
- Non-binary
- Other
- Prefer not to answer

What is your race/ethnicity?

- Arab
- Black
- Chinese
- Filipino
- Indigenous (First Nations, Métis, or Inuit)
- Japanese
- Korean
- Latin American
- South Asian
- Southeast Asian

- West Asian
- White

What is your age?

What is the highest level of education you have completed?

- High school diploma or GED
- Vocational/technical school
- Some university
- Bachelor's degree
- Master's degree
- Doctoral degree

What is your religious affiliation?

- Baha'i
- Buddhist
- Christian
- Hindu
- Jewish
- Muslim
- Sikh
- No religious affiliation
- Prefer not to respond

Please rate your political orientation on a scale from **1 (very liberal)** to **7 (very conservative)**.

What is your political party affiliation?

- Bloc Quebecois

- Conservative Party
- Green Party
- Liberal Party
- New Democratic Party (NDP)
- Other (please specify)
- Prefer not to answer

## Appendix F

### Manipulation Checks

Who was the accused?

- The babysitter of the victim
- The father of the victim
- The mother of the victim
- The older sibling of the victim

What was the accused's race?

- Arab
- Asian
- Black
- Indigenous (First Nations, Métis, or Inuit)
- Latino/a
- White
- I don't know

What was the skin condition the victim was **initially** diagnosed with?

- Diaper rash
- Eczema
- Hives
- Rosacea

What province did this case take place in?

- Alberta
- British Columbia

- Nova Scotia
- Ontario

## Appendix G

### Pilot Study Mock Trial Transcript

#### **Victim:**

Justin Thompson is a fourteen-month-old boy from the town of Keene, Ontario. He was allegedly neglected by his father, Ray Thompson.

#### **Defendant:**

Ray Thompson is a 30-year-old White man from the town of Keene, Ontario. He has been the sole caretaker of his son, Justin, for 12 months since his wife passed away. He is accused of neglecting Justin.

#### **Judge's Opening Instructions**

You are the sole judge of the facts. I am the sole judge of the law, and it is your duty to accept the law as I explain it to you. You must not use your own ideas about what the law is or should be, or rely on information about the law from any other source. Your decision must be based only on the evidence presented in the courtroom. Keep an open mind as the evidence is being presented. Do not be influenced by sympathy for or prejudice against anyone.

Mr. Thompson enters the proceedings presumed to be innocent. There is no burden on Mr. Thompson to prove that he is innocent. The Crown bears the burden of proving guilt beyond a reasonable doubt.

A reasonable doubt is based on reason and common sense. It is not imaginary or frivolous, or based on sympathy for or prejudice against anyone involved in the proceedings.

You must decide, looking at the evidence as a whole, whether the Crown has proved Mr. Thompson's guilt beyond a reasonable doubt. Do not find Mr. Thompson guilty unless you are sure he is guilty. If you have a reasonable doubt about Mr. Thompson's guilt arising from the

evidence, the absence of evidence, or the credibility or the reliability of one or more witness, you must find him not guilty. If you believe that Mr. Thompson is probably or likely guilty, that is not sufficient beyond a reasonable doubt and you must find Mr. Thompson not guilty.

To help you follow the evidence in this case, I will describe the essential elements of the offence charged. After all of the evidence has been presented, I will give you complete instructions on the law that applies to these essential elements and to any other issues that you must consider.

The first offence charged is one count of being without lawful excuse for failing to provide the necessities of life to a dependent under the age of 16, contrary to s. 215. The charges in the indictment read as follows:

1. Mr. Thompson was under a legal duty to provide necessities of life to Justin;
2. Mr. Thompson failed, without lawful excuse, to provide necessities of life to Justin;
3. It was objectively foreseeable that Mr. Thompson's failure was likely to lead to a risk of danger to Justin's life; and
4. Mr. Thompson's failure to provide the necessities of life was a marked departure from the conduct of a reasonable parent.

The second offence charged is one count of criminal negligence causing bodily harm, contrary to s. 221(b). The charge(s) in the indictment read as follows:

1. Mr. Thompson failed to obtain the necessary medical care for Justin;
2. In failing to obtain the necessary medical care for Justin, Mr. Thompson showed wanton or reckless disregard for the life or safety of Justin; and
3. Mr. Thompson's conduct caused bodily harm to Justin.

### **Court Transcript**

**Crown Opening Statement:** The Crown will prove that Mr. Thompson disregarded the life and



safety of his fourteen-month-old child, Justin. On the day of November 28, 2020, Mr. Thompson arrived at the Peterborough Regional Health Centre with Justin, who was suffering from septic shock. Justin is alive today thanks to the tireless work of the doctors and nurses who cared for him. Because Mr. Thompson failed in his fatherly duty to provide the necessities of life to Justin, he endangered Justin's life and caused Justin bodily harm. We will ask you to seek justice by finding Mr. Thompson guilty on both counts.

**Defence's Opening Statement:** Today I represent the defendant, Mr. Thompson, who is wrongly accused of failing in his fatherly duties. That Justin suffered tragically from septic shock is not in question here. The Crown wants you to believe that my client knew Justin's health was in danger and chose not to seek medical treatment. In truth, Mr. Thompson is a devoted father who brought his child to the hospital when he realized the severity of Justin's condition, just as any father would. I will ask that you return a verdict of not guilty on both counts.

**Dr. Beck, Sworn, Examined by the Crown**

**Crown:** Please state your full name and your affiliation with this case.

**Dr. Beck:** My name is Dr. Cameron Beck, and I was the attending pediatric physician in Peterborough Regional Health Centre's emergency room when Justin arrived on date at approximately 3:20 pm.

**Crown:** What happened when Justin entered the emergency room?

**Dr. Beck:** Justin arrived bundled up in multiple layers by his father to keep him warm. I noticed immediately that he had abnormal, flakey, red and dry skin, which I believed was eczema. He had numerous open and weeping lesions, and his sparse hair and eyelashes were an orange-yellow colour. He was hypothermic, with a temperature of 30°C, and had a low heart rate of 78 beats per minute. His airway was clear and he was crying, which were good signs, and his pulse

was low but regular.

**Crown:** What was your initial assessment, based on these symptoms?

**Dr. Beck:** I diagnosed him with the third stage of septic shock and knew that his life was in danger. A full-body examination revealed two toes on each foot were purple or black in colour, and no pulse could be detected in his right foot. His blood pressure was 102/86 and his breath was 32 breaths per minute. I estimated him to be about 10 kg. Justin suffered a seizure and cardiac arrest. I believe he may have experienced another seizure, but I could not confirm this because he had to be chemically paralyzed to facilitate treatment.

**Crown:** What did this treatment entail, exactly?

**Dr. Beck:** I used an intra-osseous line and an intravenous line for fluid resuscitation. We managed to warm Justin to approximately 36°C. I administered three broad-spectrum antibiotics, and medication for the seizure. He had to be placed on a ventilator. When Justin experienced a second cardiac arrest, we used several resuscitation measures and were able to recover Justin's heart rate. He was stable from that point forward.

**Crown:** Did anything stand out to you about Justin's condition or state?

**Dr. Beck:** Yes. Although I originally estimated Justin to be around 10 kg, which is in the normal range for a fourteen-month-old, he was actually between the 3<sup>rd</sup> and 15<sup>th</sup> percentile in weight. He was also below the 0.1 percentile in height for a child of his age and gender.

**Crown:** Were you able to determine how Justin became septic?

**Dr. Beck:** Yes. Justin had staphylococcal septicemia due to deficiency dermatitis, which was a consequence of malnutrition. In other words, Justin contracted a bacterial infection that entered his bloodstream as a result of a skin condition, which was necrolytic migratory erythema and not

eczema. This is a very rare skin condition, and was caused by a nutritional deficiency.

**Crown:** How do you think Justin became nutritionally deficient?

**Dr. Beck:** By the time I saw Justin, he appeared malnourished. It is my belief that he did not receive adequate nutrition at home.

### **Defence Cross Examines the Witness**

**Defence:** Dr. Beck, you stated that Justin's skin condition, which led to his bacterial infection, may have been caused by inadequate nutrition at home. Is there any other explanation for the origin of Justin's skin condition?

**Dr. Beck:** I cannot rule out the possibility that the malnutrition was due to a genetic abnormality that caused Justin to be malnourished, regardless of his diet and nutrition.

**Defence:** In fact, do you have any evidence to support your assertion that Mr. Thompson failed to provide Justin with adequate nutrition?

**Dr. Beck:** No, and I cannot speak to Justin's health before this event.

**Defence:** So to conclude, you cannot say whether Justin's malnutrition, that ultimately led to septic shock, was due to Mr. Thompson willfully depriving his child of adequate nutrition or due to a genetic abnormality?

**Dr. Beck:** No, I cannot.

**Defence:** You had a conversation with Mr. Thompson on the evening of November 28, 2020. Can you recount for the court this conversation?

**Dr. Beck:** Yes, I asked Mr. Thompson about Justin's development and symptoms prior to admission, which he willingly described. Justin was healthy with appropriate development until the last month. Although he was not yet walking or crawling, he jumped in his baby jumper, played with toys, smiled, and socially engaged with his family. Justin had long-term eczema,

which Mr. Thompson treated with creams to no beneficial effect. Mr. Thompson struggled to answer questions about Justin's diet, particularly about what he was eating and in what quantities. Justin was still bottle-feeding, did not eat meat, obtained protein from yogurt and beans, and had a varied diet. In the last month, Justin had become less interested in eating. Days before admission to the hospital, he had been sleepier and cool, and Mr. Thompson bundled him up to keep him warm. Mr. Thompson first noticed the discolouration in Justin's toes was turning to black during a bath to warm him the morning of November 28, 2020, which prompted him to take Justin to Peterborough Regional Health Centre later in the day.

**Defence:** Is there anything to suggest, as you can recall from your conversation, that Mr. Thompson was criminally negligent in his duties as a father or failed to provide Justin with the necessities of life?

**Dr. Beck:** Well, as I recall, Mr. Thompson had difficulty telling me about Justin's eating habits. And Mr. Thompson admitted to seeing Justin's toes discolouring in the morning, but did not take him to the hospital until the afternoon.

**Defence:** In your experience, is it common for parents whose children are in life-threatening conditions to be overwhelmed, and struggle with answering even simple questions?

**Dr. Beck:** Yes, that does happen.

**Defence:** So, it is entirely possible that Mr. Thompson struggled to discuss Justin's eating habits with you, not because he was uncomfortable or unaware, but because he was distraught at the state of his child?

**Dr. Beck:** Yes, that is possible.

**Defence:** Mr. Thompson believed that Justin had suffered from eczema almost his entire life. Is it possible that Mr. Thompson thought Justin's discoloured toes were due to eczema, which is

not a life-threatening condition, and that is why he did not bring Justin to the hospital immediately on the morning of date?

**Dr. Beck:** Yes. Eczema can cause hyperpigmentation, which is a darkening of the skin.

**Defence:** And you yourself initially misdiagnosed Justin's skin condition as eczema, is that correct?

**Dr. Beck:** That is correct.

### **Social Worker Alex Weaver, Sworn, Examined by the Crown**

**Crown:** Please state your full name for the court, and your affiliation with this case.

**Weaver:** My name is Alex Weaver. I am a social worker at Peterborough Regional Health Centre, and I provide support to patients and their families. In some cases, I may be assigned to a family to assess whether a child may have been abused or neglected. On November 28, 2020, I provided support to Justin's father while Justin was in treatment.

**Crown:** Can you recall your conversation with Mr. Thompson that afternoon?

**Weaver:** Yes, though our conversation was brief. I explained who I was and why I was sent to speak with him, and we discussed his son's current state. I gave him information on various resources the hospital had that might help him and offered to stay with him for support.

### **Defence Cross Examines the Witness**

**Defence:** You stated that you are sometimes assigned to cases at the hospital to assess whether a child has been maltreated. Was this the case for Justin?

**Weaver:** No. I visited with Mr. Thompson to offer any assistance I could as a social worker, but I was not assigned to Justin to assess any potential abuse or neglect.

**Defence:** At the time of your conversation with Mr. Thompson and based on your expertise as a child social worker, did you have any suspicion that Justin had been abused or neglected?

**Weaver:** No, I did not.

**Defence:** Did you follow the procedure for a case of suspected abuse or neglect by flagging the case to your supervisor?

**Weaver:** No, because I did not suspect any abuse or neglect.

**Police Officer Morgan Reese, Sworn, Examined by the Crown**

**Crown:** Can you please state your name and occupation?

**Officer Reese:** My name is Morgan Reese and I am a police officer with the Ontario Regional Police. I was the primary investigator in the Ray Thompson case.

**Crown:** I understand that Mr. Thompson's laptop was seized. Did you find any evidence relevant to the case on his laptop, and if so, can you share with the court what you found?

**Officer Reese:** There were several internet searches. On May 22, 2020: "what causes infant eczema?" In June of 2020: "how an elimination diet cured my daughter's eczema." On October 20, 2020: "asthma-allergies-eczema." On November 13, 2020: "poor circulation in feet eczema in infant." On the evening of November 27, 2020: "natural cure for wet gangrene" and "can cabbage leaves cure gangrene?" On November 28, 2020, at 11:44 am: "gangrene cayenne as treatment."

**Crown:** Is there any evidence to suggest Mr. Thompson sought help for any of these symptoms?

**Officer Reese:** No, there is no evidence before the November 28, 2020 that Mr. Thompson saw a doctor or any other medical professional for his son. Although the Thompson's residence is a thirty-minute drive to the hospitals from their town, Mr. Thompson did not take his son until hours later.

**Defence Cross Examines the Witness**

**Defence:** You visited the Thompson's residence as part of your investigation. How would you

describe the home?

**Officer Reese:** The Thompson's duplex was clean. The kitchen was well-stocked with healthy, whole foods and home remedies. There were numerous books on parenting and health. There were appropriate safety precautions for young children, such as child-proof locks on cupboards and dangerous substances that were stored out of reach.

**Defence:** Did you find anything out of the ordinary that may suggest Justin had been deprived of nutrients or otherwise neglected?

**Officer Reese:** Mr. Thompson appeared to have no candy or other refined sugar foods in the home.

**Defence:** Are you suggesting that a lack of sugar constitutes neglect?

**Officer Reese:** No, but it stood out. I think it's out of the ordinary.

**Defence:** So, based on your search of the Thompson's residence, it would appear that Justin had a safe environment where he was protected from potential hazards and provided with healthy foods and no refined sugars.

**Officer Reese:** Based on my search, yes, that appears to be the case.

**Crown closing statement:** Mr. Thompson was aware of Justin's skin condition for weeks, and on the morning of November 28, 2020, noticed Justin's toes turning black. By the time Mr. Thompson took Justin to the hospital, it was almost 4 pm and Justin was suffering from septic shock. Keeping your child away from refined sugars and using an organic diet cannot lead to this condition. Mr. Thompson failed in his fatherly duties to provide Justin with the necessities of life, and endangered little Justin's life. Mr. Thompson wantonly and recklessly disregarded Justin's safety and health, and acted in a criminally negligent way. Mr. Thompson's conduct

constituted a marked departure from the standard of a reasonably prudent father. I urge you to do the right thing and find Mr. Thompson guilty on both counts.

**Defence closing statement:** Mr. Thompson is a caring, devoted father who provided his son with a safe, child-proofed home and a healthy diet. The Crown suggests Mr. Thompson knowingly malnourished his son, but provide no evidence ruling out genetic abnormality as the cause of this malnourishment. A professional doctor, trained to work in emergency pediatrics, believed Justin's rash was eczema. How can we hold a father to a higher standard than a medical doctor? Mr. Thompson acted as any reasonable father would, and brought Justin to the hospital when he realized it was not just a rash. Justin has already suffered enough; he does not need to suffer the loss or punishment of the only parent he has. You must find Mr. Thompson not guilty on both counts.

### **Judge's Closing Instructions**

It is your duty to decide whether the Crown has proved Mr. Thompson's guilt beyond a reasonable doubt. It is not my role to express any view on the guilt or innocence of Mr. Thompson. You must make your decision on a rational, fair, an impartial consideration of all the evidence. Do not consider passion, or sympathy, or prejudice against the accused, the Crown, or anyone in the case. You may believe some, none, or all of the evidence given by a witness. If you have a reasonable doubt about Mr. Thompson's guilt arising from the credibility of the witnesses, then you must find him not guilty.

To decide whether the Crown has proved beyond a reasonable doubt that Mr. Thompson is guilty of being without lawful excuse for failing to provide the necessaries of life (s. 215), consider the following questions:

1. Was Mr. Thompson under a legal duty to provide the necessaries of life to Justin?



2. Did Mr. Thompson fail to provide Justin with the necessities of life, specifically medical attention?
3. Was it objectively foreseeable that this failure would likely lead to a risk of danger to Justin's life or cause his health to be endangered permanently?
4. Did Mr. Thompson's conduct represent a marked departure from the conduct of a reasonably prudent parent?

Unless you are satisfied beyond a reasonable doubt that the Crown has proved all these essential elements, you must Mr. Thompson find not guilty on this count. If Mr. Thompson acted under an honest but mistaken belief that his conduct was not dangerous in the circumstances, you must find him not guilty on this count. If you are satisfied beyond a reasonable doubt of all the above essential elements, you must find Mr. Thompson guilty on this count.

To decide whether the Crown has proved beyond a reasonable doubt that Mr. Thompson is guilty of criminal negligence causing bodily harm (s. 221(b)), consider the following questions:

1. Did Mr. Thompson fail to obtain the necessary medical care for Justin?
2. Did Mr. Thompson show a wanton or reckless disregard for the life or safety of Justin?
3. Did Mr. Thompson's conduct cause Justin bodily harm?

Unless you are satisfied beyond a reasonable doubt that the Crown has proved all these essential elements, you must Mr. Thompson find not guilty on this count. If you are satisfied beyond a reasonable doubt of all these essential elements, you must find Mr. Thompson guilty on this count.

## Appendix H

### Pilot Study Verdict Questionnaire

Do you believe the defendant, Ray Thompson, is **guilty of failure to provide the necessities of life for a dependent under the age of 16 years without lawful excuse**, under s. 215 of the Criminal Code?

- Yes
- No

Please explain why you provided this verdict.

Do you believe the defendant, Ray Thompson, is **guilty of criminal negligence causing bodily harm**, under s. 221(b) of the Criminal Code?

- Yes
- No

Please explain why you provided this verdict.

## Appendix I

### Pilot Study Gendered Behaviour Questionnaire

Please rate the permissibility of the following behaviours for a [man/woman/general Canadian] on a scale of 1 (impermissible) to 9 (permissible).

1. Express emotion
2. Forceful
3. Wholesome
4. Superstitious
5. Naïve
6. Assertive
7. Promiscuous
8. Arrogant
9. Warm & kind
10. Yielding
11. Attention to appearances
12. Competitive
13. Leadership ability
14. Decisive
15. Spiritual
16. Willing to take risks
17. Stubborn
18. Cheerful
19. Strong personality

20. Shy
21. Excitable
22. Interested in children
23. Business sense
24. Friendly
25. Gullible
26. Intense
27. Cynical
28. Rational
29. Moody
30. Aggressive
31. Impressionable
32. Patient
33. Athletic
34. Ambitious
35. Melodramatic
36. High self-esteem
37. Self-reliant
38. Controlling
39. Approval seeking
40. Cooperative
41. Sensitive
42. Clean

43. Emotional

44. Rebellious

45. Weak

## Appendix J

### Pilot Study Gendered Behaviours Results

| Gendered Behaviour       | Mean of Permissibility Scale |       | Mean of Valence Scale |
|--------------------------|------------------------------|-------|-----------------------|
|                          | Man                          | Woman | General Canadian      |
| Warm & kind              | 7.36                         | 7.85  | 7.71                  |
| Interested in children   | 6.91                         | 8.03  | 7.09                  |
| Sensitive                | 6.68                         | 8.06  | 7.15                  |
| Friendly                 | 7.45                         | 8.03  | 8.06                  |
| Clean                    | 7.09                         | 8.06  | 7.82                  |
| Attention to appearances | 6.76                         | 7.71  | 7.06                  |
| Patient                  | 6.97                         | 7.76  | 7.62                  |
| Cheerful                 | 7.53                         | 7.76  | 7.56                  |
| Cooperative              | 7.68                         | 7.53  | 7.74                  |
| Wholesome                | 7.30                         | 7.56  | 7.44                  |
| Express emotion          | 7.15                         | 7.50  | 7.00                  |
| Spiritual                | 6.82                         | 7.24  | 6.53                  |
| Excitable                | 7.41                         | 7.97  | 7.44                  |
| Business sense           | 7.68                         | 7.70  | 7.15                  |
| Athletic                 | 7.65                         | 7.41  | 7.76                  |
| Leadership ability       | 7.45                         | 7.35  | 7.32                  |
| Self-reliant             | 7.70                         | 7.18  | 7.47                  |
| Ambitious                | 7.73                         | 7.65  | 7.85                  |
| High self-esteem         | 7.41                         | 7.50  | 7.26                  |

| Gendered Behaviour    | Mean of Permissibility Scale |      | Mean of Valence Scale |
|-----------------------|------------------------------|------|-----------------------|
| Assertive             | 6.29                         | 7.09 | 6.09                  |
| Decisive              | 7.42                         | 7.29 | 7.21                  |
| Strong personality    | 7.50                         | 7.56 | 7.00                  |
| Rational              | 7.09                         | 7.59 | 6.91                  |
| Competitive           | 6.85                         | 6.94 | 6.56                  |
| Willing to take risks | 7.00                         | 6.76 | 6.52                  |
| Aggressive            | 4.82                         | 3.82 | 3.82                  |
| Intense               | 6.18                         | 6.12 | 5.06                  |
| Forceful              | 4.03                         | 4.47 | 4.35                  |
| Rebellious            | 6.06                         | 5.71 | 5.12                  |
| Stubborn              | 6.56                         | 6.09 | 4.91                  |
| Controlling           | 4.76                         | 4.97 | 4.18                  |
| Cynical               | 5.35                         | 5.06 | 4.38                  |
| Promiscuous           | 5.50                         | 5.41 | 5.26                  |
| Arrogant              | 4.47                         | 4.29 | 3.85                  |
| Emotional             | 6.75                         | 7.76 | 6.88                  |
| Approval seeking      | 5.71                         | 6.09 | 5.58                  |
| Impressionable        | 6.44                         | 6.29 | 6.12                  |
| Yielding              | 6.67                         | 6.50 | 6.38                  |
| Superstitious         | 5.53                         | 6.35 | 5.53                  |
| Shy                   | 6.97                         | 7.48 | 6.24                  |
| Moody                 | 5.76                         | 6.06 | 4.71                  |

| Gendered Behaviour | Mean of Permissibility Scale |      | Mean of Valence Scale |
|--------------------|------------------------------|------|-----------------------|
| Melodramatic       | 5.59                         | 6.00 | 4.79                  |
| Naïve              | 6.27                         | 6.09 | 5.33                  |
| Gullible           | 5.62                         | 6.32 | 4.88                  |
| Weak               | 5.76                         | 6.21 | 4.24                  |

*Note.* Both the permissibility and valence scales ranged from a score of 1 (*impermissible* or *negative*) to 9 (*permissible* or *positive*).



## Appendix K

### Gender and Indigeneity Adjectives ANOVA Results

| Adjective                 | Main Effect of<br>Gender <i>p</i> -value <sup>a</sup>                      | Main Effect of<br>Race <i>p</i> -value <sup>a</sup>   | Interaction<br><i>p</i> -value | Sig. Post-Hoc<br>Interaction <i>p</i> -value <sup>a</sup> |
|---------------------------|--|---|--------------------------------|---|
| Compassionate             | .060   | .005  | .559                           |   |
|                           |  | White defendant<br>rated lower ( <i>M</i> =<br>4.30) than<br>Indigenous<br>defendant ( <i>M</i> = 4.69) |                                |   |
| Uneducated                | .053   | .517  | .470                           |   |
| Spiritual                 | .316   | .021  | .102                           |   |
|                           |  | White defendant<br>rated lower ( <i>M</i> =<br>3.73) than<br>Indigenous<br>defendant ( <i>M</i> = 4.11) |                                |   |
| Aggressive                | .591   | .045  | .719                           |   |
| Physically dirty          | .459   | .777  | .791                           |   |
| Kind                      | .013   | <.001   | .401                           |   |
|                           | Man rated higher<br>( <i>M</i> = 4.35) than<br>woman ( <i>M</i> =<br>4.04) | White defendant<br>rated lower ( <i>M</i> =<br>3.98) than<br>Indigenous<br>defendant ( <i>M</i> = 4.41) |                                |   |
| Desires<br>responsibility | .050   | .105  | .326                           |   |
|                           | Man rated higher<br>( <i>M</i> = 4.25) than<br>woman ( <i>M</i> =<br>3.97) |   |                                |   |
| Dominant                  | .098   | .133  | .536                           |   |
| Emotional                 | .913   | .143  | .368                           |   |

| Adjective         | Main Effect of Gender <i>p</i> -value <sup>a</sup>                       | Main Effect of Race <i>p</i> -value <sup>a</sup>   | Interaction <i>p</i> -value | Sig. Post-Hoc Interaction <i>p</i> -value <sup>a</sup>  |
|-------------------|--|--|-----------------------------|---|
| Understanding     | .209   | <.001<br>White defendant rated lower ( <i>M</i> = 3.67) than Indigenous defendant ( <i>M</i> = 4.10) | .753                        |   |
| Bad parent        | .075   | .003<br>White defendant rated higher ( <i>M</i> = 3.55) than Indigenous defendant ( <i>M</i> = 3.06) | .029                        | <.001<br>White woman rated higher ( <i>M</i> = 3.88) than Indigenous woman ( <i>M</i> = 3.03) |
| Collaborative     | .521   | .003<br>White defendant rated lower ( <i>M</i> = 3.27) than Indigenous defendant ( <i>M</i> = 3.75)  | .029                        | <.001<br>White woman rated lower ( <i>M</i> = 3.18) than Indigenous woman ( <i>M</i> = 3.93)  |
| Poor              | .128   | .017<br>White defendant rated lower ( <i>M</i> = 2.78) than Indigenous defendant ( <i>M</i> = 3.16)  | .371                        |   |
| Welfare dependent | .044<br>Man rated lower ( <i>M</i> = 2.48) than woman ( <i>M</i> = 2.79) | .160   | .087                        |   |
| Lazy              | .323   | .275   | .363                        |   |
| Bold              | .618   | .518   | .564                        |   |

| Adjective          | Main Effect of Gender <i>p</i> -value <sup>a</sup>                                  | Main Effect of Race <i>p</i> -value <sup>a</sup>   | Interaction <i>p</i> -value | Sig. Post-Hoc Interaction <i>p</i> -value <sup>a</sup>                                       |
|--------------------|---|--|-----------------------------|--|
| Emotionally stable | .001<br>Man rated higher ( <i>M</i> = 4.09) than woman ( <i>M</i> = 3.68)           | .003<br>White defendant rated lower ( <i>M</i> = 3.69) than Indigenous defendant ( <i>M</i> = 4.08)  | .006                        | <.001<br>White woman rated lower ( <i>M</i> = 3.31) than Indigenous woman ( <i>M</i> = 4.05) |
| Criminal           | .371  | .004<br>White defendant rated higher ( <i>M</i> = 2.45) than Indigenous defendant ( <i>M</i> = 2.06) | .309                        |  |
| Undisciplined      | .906  | .083   | .039                        | .008<br>White woman rated higher ( <i>M</i> = 3.18) than Indigenous woman ( <i>M</i> = 2.55) |
| Competent          | .105  | .003<br>White defendant rated lower ( <i>M</i> = 3.5) than Indigenous defendant ( <i>M</i> = 3.90)   | .075                        |  |
| Violent            | .273  | .257   | .542                        |  |
| Self-reliant       | .008<br>Man rated higher ( <i>M</i> = 4.93) than woman defendant ( <i>M</i> = 4.53) | .020<br>White defendant rated lower ( <i>M</i> = 4.55) than Indigenous defendant ( <i>M</i> = 4.91)  | .495                        |  |
| Assertive          | .440  | .082   | .235                        |  |

| Adjective           | Main Effect of Gender <i>p</i> -value <sup>a</sup>                        | Main Effect of Race <i>p</i> -value <sup>a</sup>   | Interaction <i>p</i> -value | Sig. Post-Hoc Interaction <i>p</i> -value <sup>a</sup>  |
|---------------------|---|--|-----------------------------|---|
| Communicative       | .114  | .049<br>White defendant rated lower ( <i>M</i> = 3.80) than Indigenous defendant ( <i>M</i> = 4.07)  | .002                        | <.001<br>White woman rated lower ( <i>M</i> = 3.48) than Indigenous woman ( <i>M</i> = 4.18)  |
| Leadership ability  | .184  | .003<br>White defendant rated lower ( <i>M</i> = 2.76) than Indigenous defendant ( <i>M</i> = 3.13)  | .063                        |   |
| Sympathetic         | .094  | <.001<br>White defendant rated lower ( <i>M</i> = 3.63) than Indigenous defendant ( <i>M</i> = 4.16) | .051                        |   |
| Skilled in business | .007<br>Man rated higher ( <i>M</i> = 2.94) than woman ( <i>M</i> = 2.60) | .440   | .166                        |   |
| Abusive             | .467  | .029<br>White defendant rated higher ( <i>M</i> = 2.51) than Indigenous defendant ( <i>M</i> = .219) | .012                        | <.001<br>White woman rated higher ( <i>M</i> = 2.47) than Indigenous woman ( <i>M</i> = 2.06) |
| Task-oriented       | .004<br>Man rated higher ( <i>M</i> = 3.44) than woman ( <i>M</i> = 3.05) | .466   | .679                        |   |

| Adjective             | Main Effect of Gender <i>p</i> -value <sup>a</sup>                         | Main Effect of Race <i>p</i> -value <sup>a</sup>   | Interaction <i>p</i> -value | Sig. Post-Hoc Interaction <i>p</i> -value <sup>a</sup> |
|-----------------------|--|--|-----------------------------|--|
| Intuitive             | .093   | .003<br>White defendant rated lower ( <i>M</i> = 3.05) than Indigenous defendant ( <i>M</i> = 3.49)  | .374                        |  |
| Independent           | <.001<br>Man rated higher ( <i>M</i> = 4.91) than woman ( <i>M</i> = 4.41) | .041<br>White defendant rated lower ( <i>M</i> = 4.50) than Indigenous defendant ( <i>M</i> = 4.81)  | .269                        |  |
| Sentimental           | .364   | .005<br>White defendant rated lower ( <i>M</i> = 3.45) than Indigenous defendant ( <i>M</i> = 3.83)  | .728                        |  |
| Relationship-oriented | .022<br>Man rated higher ( <i>M</i> = 3.82) than woman ( <i>M</i> = 3.50)  | <.001<br>White defendant rated lower ( <i>M</i> = 3.83) than Indigenous defendant ( <i>M</i> = 3.93) | .961                        |  |
| Alcoholic             | .511   | .969   | .273                        |  |
| Productive            | .375   | .027<br>White defendant rated lower ( <i>M</i> = 3.22) than Indigenous defendant ( <i>M</i> = 3.53)  | .616                        |  |
| Competitive           | .236   | .789   | .475                        |  |

| Adjective            | Main Effect of Gender <i>p</i> -value <sup>a</sup>                        | Main Effect of Race <i>p</i> -value <sup>a</sup>   | Interaction <i>p</i> -value | Sig. Post-Hoc Interaction <i>p</i> -value <sup>a</sup>  |
|----------------------|---|--|-----------------------------|---|
| Dangerous            | .289  | .004<br>White defendant rated higher ( <i>M</i> = 2.82) than Indigenous defendant ( <i>M</i> = 2.38) | .016                        | <.001<br>White woman rated higher ( <i>M</i> = 3.09) than Indigenous woman ( <i>M</i> = 2.28) |
| Achievement-oriented | .039<br>Man rated higher ( <i>M</i> = 3.01) than woman ( <i>M</i> = 2.74) | .590   | .820                        |   |
| Effective            | .012<br>Man rated higher ( <i>M</i> = 3.42) than woman ( <i>M</i> = 3.09) | <.001<br>White defendant rated lower ( <i>M</i> = 2.94) than Indigenous defendant ( <i>M</i> = 3.57) |                             |   |
| Likeable             | .009<br>Man rated higher ( <i>M</i> = 3.95) than woman ( <i>M</i> = 3.60) | <.001<br>White defendant rated lower ( <i>M</i> = 3.44) than Indigenous defendant ( <i>M</i> = 4.11) |                             |   |
| Sexually easy        | .517  | .117   | .633                        |   |
| Child-like           | .384  | .014<br>White defendant rated higher ( <i>M</i> = 2.90) than Indigenous defendant ( <i>M</i> = 2.54) | .338                        |   |

*Note.* Scores on the adjective scales ranged from 1 (*not at all*) to 7 (*very much*).

<sup>a</sup>*p*-values for the main effects and post-hoc interactions used Bonferroni's correction.

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