Racialization, Agency, and the Law: Wendake First Nation Confronts the Canadian Criminal Justice System, 1918-1939

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Abstract

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Dona Leigh Schofield

Throughout the nineteenth century, the Province of Canada enacted a series of laws in an effort to extend their jurisdiction over the lands and peoples residing in the territory. Even though, in theory, these laws applied equally to everyone, for Indigenous peoples, the impact of state expansion occurred alongside the Canadian government's assimilationist policies. Conceptualized as an "Indian Problem", the 1876 *Indian Act* sought to regulate Indigenous people by labelling them as a separate racial category; thereby creating two types of legal persons: "Indian" and "non-Indian". Given that this racial distinction was deeply embedded into the colonial structure, it shaped Indigenous people's interactions with state institutions, including the justice system. This thesis examines the implementation of Canadian criminal law vis-à-vis members of the Wendake First Nation and the different ways in which they navigated the legal system between 1918 and 1939. Drawing from a total of 34 court cases, I argue that the law operated as a tool of colonial control to uphold racial distinctions between Indigenous and non-Indigenous people. At the same time, this study also reinforces the notion that the Wendat were active historical agents who played a role in negotiating and renegotiating their role in the new colonial order. Although these two themes – racialization and agency – seem to contradict each other, this thesis demonstrates that not only can they be reconciled, but twentieth-century court cases provide important historical insights into the origins of today's Indigenous overrepresentation in the criminal justice system.

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Table of Contents

A Note on Methodology

Wendake was – and still is – an Indigenous community with a long history of contact with Euro-Canadians; as such, their experiences with colonialism provide an important contrast compared to those of the First Nations in the West, whose interactions with the law throughout the twentieth century has generally received more attention in the scholarship. Moreover, while there is an abundance of research on the Wendat's relationship with the French during the seventeenth century, the existing literature pays less attention to them past this time period. This thesis brings the Wendat back to the forefront of the historical narrative by shedding light on their unique lived experiences between 1918 and 1939 at a time when the reach of federal and provincial jurisdiction in Québec – and elsewhere in Canada – was expanding. In essence, this thesis asks: how was Canadian criminal law implemented vis-à-vis members of the Wendake First Nation during the interwar period?

In order to answer this question, I draw primarily from the court cases located at the Bibliothèque et Archives Nationale du Québec (BAnQ). During my first research trip to the BAnQ in February 2019, I spoke to the archivist about my project and he directed me to the *plumitif*, or the court docket, which is a compilation of court records that logs criminal and penal matters from 1923 to 1968 and from 1977 to 1978. While consulting the *plumitif*, I used two main approaches to identify Wendat men and women as either plaintiffs or defendants. First, I looked for common family surnames such as "Sioui", "Groslouis", "Bastien", and "Picard". Second, because the *plumitif* listed the area where the parties resided, I searched for references to Wendake by looking for terms that were used at the time to refer to the community, like "Village des Hurons", "Réserve Huronne", "Village Indien", "Loretteville", "Jeune-Lorette", and "l'Ancienne-Lorette". For the last three terms, I cross-referenced them with the family surnames to ensure the individuals were Wendat. By combining both approaches, I was able to pinpoint who was Indigenous and who was not, as well as where the person was residing at the time he or she encountered the legal system. However, one of the *plumitif*'s main limitation is that it does not include specific detail about how the judicial process unfolded. For instance, while the document outlines the procedures that were taken in a court case, there is often no mention of what was said. Nevertheless, the *plumitif* allowed me to trace the legal journey of Wendat men

and women – from the date the complaint was file to the moment a judge's decision was rendered – by examining the steps that were taken in the case. In addition to the *plumitif*, I also consulted the *dossiers*, which are the original case files that usually contained various supporting documents produced by judges, lawyers, witnesses, and others who were involved in the judicial process. For the *dossiers*, I consulted the "Thémis" database on site at the BAnQ, where, I applied the same approach I used for the *plumitif*: I searched for common surnames and references to Wendake using the terms I mention above. Due to the richness of these files, not only was I able to trace the Wendat's legal journey, but I was also able to thoroughly examine their encounters with various state officials and institutions. In turn, this painted a much clearer picture of the judicial process and provided me with answers to my research question.

By the time I finished consulting the *plumitif* and the *dossiers*, I had a significant number of cases, the majority of which were not relevant either because the person was not Indigenous or I was unable to confirm their Indigeneity; consequently, I did not include those cases in my thesis. The only exception to this is when I explicitly state that I am using a case involving a non-Indigenous offender to compare and contrast with the experience of a Wendat defendant. For the cases that include Wendat plaintiffs and defendants that are relevant to my particular topic and provide enough information to analyze, I chose to examine those in-text. By contrast, those that are relevant but contain an insufficient amount of detail to analyze on their own are cited as supporting evidence in the footnotes to reinforce my argument and the pattern they illustrate. While I have tried my best to include all relevant court cases, I am not immune to human error, and thus, I do not claim to have found every case involving a Wendat plaintiff or defendant.

Finally, a brief statement on terminology. In an effort to remain clear and transparent about my methodology, I use the terms "*plumitif*" or "court docket" throughout my thesis to refer to the court cases I found in the *plumitif*. Applying that same logic, when I employ the term "case file", I am referring to the cases I came across in the *dossiers*.

Introduction: Racialization, Agency, and the Law

On August 26th, 1932, 70-year-old Albert Sioui of Loretteville was accused by Patrick O'Sullivan of "vol de bois".[1] After signing off on the plaintiff's statement, the Honourable Judge Arthur Fitzpatrick issued a summons to the defendant requesting his presence in court for the preliminary hearing that was scheduled for three days later.[2] However, Sioui did not show up and as a result, the Honourable Judge Laetare Roy issued a warrant for his arrest.[3] By the time the case resumed on August 31st, Sioui and his lawyer, Maître Paul Lesage, appeared before the court but no plea was entered, and the judge granted him a conditional release on a promise to appear.[4] According to the *plumitif*, September 8th was supposed to be the first day of the hearing, but Sioui was absent and the case was rescheduled once again.[5] Five days later, on the 13th, the case resumed and all parties were present, but the information regarding how this process unfolded is vague and unclear. Over the course of the next month, the court met on three separate occasions with each session similar to the last; the defendant was accompanied by his lawyer, the crown presented its evidence against the accused, the defence rebutted, and the case was adjourned.[6] On September 27th, the *plumitif* indicates that Sioui and his counsel presented a formal motion requesting an expedited process, which was granted by the Honourable Judge Arthur Fitzpatrick.[7] When the hearing resumed on October 4th, the case proceeded and although the *plumitif* indicates that a judgement was to be rendered eight days later, no decision was given, and the case continued. Finally, on October 19th, Judge Fitzpatrick delivered his verdict, acquitting Sioui of all charges and the matter was officially resolved.[8]

Born in approximately 1862, five years before Confederation, Albert Sioui's coming of age occurred alongside the expansion of the Canadian state. Throughout his lifetime, a series of political, economic, social, and cultural initiatives coupled with the creation of a legal system to uphold them laid the groundwork for state intrusion into the lives of Indigenous people. In turn, increasing their likelihood of encountering the state and its various institutions. For Sioui, this is

[1] *O'Sullivan v Sioui* (26 August 1932), Québec 7625 (Québec Cour des Sessions de la Paix)
[2] Ibid.
[3] Ibid.
[4] Ibid.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid.

seen most clearly by the fact that he was charged for engaging in behaviour – gathering wood from the forest – that would not have necessarily fallen under the purview of a court of law during his parents' or his grandparents' lifetime. Thus, his experiences were significantly different from those of his ancestors. Even though Sioui was eventually acquitted of all charges, this case demonstrates a certain amount of continuity between the criminalization of Indigenous peoples in the twentieth century and their overrepresentation in the justice system today. Over the last few weeks, the shooting deaths of Chantel Moore and Rodney Levi during two separate wellness checks one week apart and the video of the violent arrest of Athabasca Chipewyan First Nation Chief Allan Adam reminds us that the ripple effects of the colonial system continue to be felt today. More specifically, these violent incidents reinforce the fact that these events are not isolated occurrences; rather, they are part of a troubling pattern in which Indigenous people continue to be disproportionately represented in the legal system. According to a research analysis conducted by CTV News, out of the 66 people who were shot and killed by police since 2017 and whose ethnicity could be identified, 25 were Indigenous.[9] In other words, over the last two and a half years, Indigenous people accounted for nearly half of the shooting deaths attributed to police. Unfortunately, these disparities do not stop with policing practices. In fact, they also extend to the correctional system. Based on a 2019 report released by the Canadian Centre for Justice Statistics, although Indigenous people make up approximately 4% of the total population, they represented 30% of admissions into provincial and territorial custody in 2017 and 2018.[10] Thus, compared to their non-Indigenous counterparts, Indigenous people continue to be overrepresented in the justice system.[11]

Throughout the years, a number of government commissions and inquiries have been tasked with analyzing the inequitable treatment of Indigenous peoples in Canada. For example, in Québec, the Viens Commission examined the relationship between the province's public sector and First Nations and Inuit peoples. During his investigation, the

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[9] Ryan Flanagan, "Why are Indigenous people in Canada so much more likely to be shot and killed by police?," *CTV News*, June 19, 2020, https://www.ctvnews.ca/canada/why-are-indigenous-people-in-canada-so-much-more-likely-to-be-shot-and-killed-by-police-1.4989864

[10] Jamil Malakieh, "Adult and youth correctional statistics in Canada, 2017/2018," *The Canadian Centre for Justice Statistics*, May 9, 2019, https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00010-eng.pdf

[11] To access the complete report see Jamil Malakieh, "Adult and youth correctional statistics in Canada, 2017/2018," *The Canadian Centre for Justice Statistics*, May 9, 2019, https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00010-eng.pdf

head commissioner Jacques Viens heard from a total of 277 Indigenous people who described their personal experiences with police, hospital staff, youth protection agencies, and members of the justice system.[12] After listening to a total of 1188 stories over the span of 38 weeks, Viens published his final report in 2019 concluding that "systemic discrimination" against Indigenous peoples in the province was "impossible to deny".[13] Along with recommending that Québec issue a formal apology to Indigenous peoples for the physical, psychological, and emotional damage they suffered as a result of provincial laws, policies, and practices, the head commissioner also presented a list of 142 calls to action to improve policing, justice, social services, youth protection, and mental health programs.[14] Even though the specific mandate of inquiries change, the common thread woven throughout each one is their overall conclusion: the systemic racism deeply embedded within state institutions has resulted in the differential treatment of Indigenous peoples. Therefore, the violent incidents that left Chief Allan Adam badly beaten and claimed the lives of Chantel Moore and Rodney Levi – as well as many others – illustrates the different ways in which the criminal justice system both reflects and reinforces a racial bias towards Indigenous peoples. Turning to the past can help us understand how and why this situation has developed the way it has.

As with Indigenous peoples today, Albert Sioui's experiences – within the reserve and society at large – were significantly different from those of his ancestors. Prior to the arrival of Europeans to the North American continent, the Wendat, which included the Bear, Cord, Deer, and Rock tribes were predominantly sedentary.[15] United under the Wendat Confederacy, the villages of the Turtle, Bear, Wolf, Deer, Beaver, Hawk, Fox, and Sturgeon clans were located "along the northern shores of the Lower Great Lakes and the Saint Lawrence River", and within each community, the Wendat lived in longhouses.[16] These permanent dwellings were home to

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[12] Benjamin Shingler and Kamila Hinkson, "Provincial report finds treatment of Indigenous people falls short across a range of public services," *CBC News*, September 30, 2019, https://www.cbc.ca/news/canada/montreal/quebec-treatment-indigenous-viens-commission-report-1.5297888

[13] Ibid.

[14] Ibid. To consult the complete report please see: Québec, Commission d'enquête sur les relations entre les Autochtones et certains services publics, *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress*, (Val d'Or: Gouvernement du Québec, 2019) https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Rapport/Final_report.pdf

[15] Kathryn Magee Labelle and Thomas Peace, introduction to *From Huronia to Wendake: Adversity, Migration, and Resilience, 1650-1900*, ed. Kathryn Magee Labelle and Thomas Peace (Oklahoma: University of Oklahoma Press, 2017), 3.

[16] Ibid. 3.

multiple families, in turn making the longhouse "une unité de résidence multifamiliale".[17] As a result, the homes were easily adaptable to include large numbers of people. In addition to having a practical purpose, longhouses also had a symbolic meaning. In particular, they were a representation of Wendat occupation. Since erecting these structures involved community participation and many days of hard labor, the Wendat only built them in areas where they planned to live for a prolonged period of time.[18] By contrast, temporary homes known as wigwams were used for short-term occupation such as hunting and fishing trips because they required less work, thus giving communities the freedom of movement.[19] Moreover, at the heart of each community lay deeply spiritual peoples whose faith transcended all aspects of their daily lives.[20] This belief was rooted in the notion that the Wendat "[…] vivaient dans un univers maintenu en équilibre par des esprits, qu'ils devaient solliciter, respecter, et apaiser, si nécessaire."[21] Oftentimes, the gratitude they owed to non-humans was displayed during seasonal hunting trips. For example, successful Wendat hunters were required to pay homage to the spirits of the animals they killed.[22] Thus, soliciting, respecting, and appeasing human and non-human spirits was instrumental in maintaining a harmonious balance between them.

A fundamental aspect of the Wendat's mostly sedentary lifestyle centered around traditional modes of subsistence. In fact, a combination of agricultural production and hunting and fishing practices formed the foundation of both their diet and economy. For instance, along with producing corn, the Wendat also farmed "les courges, les fèves, les citrouilles, et les tournesols."[23] A central feature of this economic system was the gendered division of labour between Wendat men and women. While men cleared the fields, for example, women were responsible for preparing the soil and planting the seeds.[24] As such, these shared responsibilities essentially created a mutually beneficial partnership for men and women since both were needed for the success of the harvest. In conjunction with agricultural production, the Wendat also engaged in seasonal hunting and fishing. Taking place during both the spring and fall months,

[17] Alain Beaulieu, Stéphanie Béreau, and Jean Tanguay, *Les Wendats du Québec: Territoire, Économie et Identité, 1650-1930* (Québec: Les Éditions GID, 2013), 29.
[18] Ibid. 29.
[19] Ibid. 29.
[20] Ibid. 49.
[21] Ibid. 49.
[22] Ibid. 50.
[23] Ibid. 29.
[24] Ibid. 35.

one group of men would go fishing while the other went hunting.[25] Even though this mixed economy allowed the Wendat to supplement their diet with various forms of nutrition, these two activities remained far less important than agricultural production.[26] Furthermore, aside from serving both an economic and subsistence purpose, hunting and fishing were also an important part of the Wendat's traditional teaching. For instance, young boys who accompanied their fathers on these trips learned survival skills.[27] Thus, these activities allowed fathers to pass down important knowledge to their sons in order to prepare them for their future role as providers. Finally, their alliances with neighbouring communities created invaluable friendships, that ensured the protection and success of the eight clans. One of the benefits that was provided to them by treaties and their geographic position was the ability to seamlessly integrate into various trading networks with other Indigenous nations. In turn, the four tribes were given the opportunity to exchange for items they did not have, such as Anishinaabe wild game.[28]

The arrival of the French in North America during the middle of the sixteenth century significantly altered the lives of the Wendat. In fact, this encounter laid the foundation for an important French-Wendat alliance. For example, following their first meeting with Samuel de Champlain in 1609 through to the dispersal of 1649, the Wendat remained the primary trading partners and military allies of the French, oftentimes acting as middlemen in the latter's encounters with other Indigenous groups to the west and the north.[29] Moreover, a key feature of this partnership included the presence of Jesuit missionaries among the Wendat.[30] Although the documentation produced from this alliance was written from a Eurocentric perspective, they provide researchers with an in-depth look into early seventeenth century Wendat culture. However, within the first few decades of the French presence on the continent, a series of devastating epidemics coupled with intense warfare between neighbouring Indigenous nations and Christianization missions gradually reduced the Wendat population.[31] According to historian Alain Beaulieu, by 1648, the Wendat population decreased dramatically from 30 000 to 9000

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[25] Ibid. 41.
[26] Ibid. 35.
[27] Ibid. 48.
[28] Labelle and Peace, "Introduction," 4. Among those who have written extensively about the Wendat is scholar Bruce Trigger. Trigger's in-depth analysis of the Wendat remains the authoritative work on Wendat society at the time of European contact. To consult his work, see Bruce Trigger. *Children of Aataentsic: A History of the Huron People to 1660* (Montreal: McGill-Queen's University Press, 1976).
[29] Beaulieu, et al., *Les Wendats du Québec*, 27-28.
[30] Ibid. 28.
[31] Labelle and Peace, "Introduction," 4.

souls in the span of several years.[32] Consequently, this depopulation rendered the Wendat vulnerable to both Christianizing missions and further attacks.[33] As a response to political, economic, religious, and social pressures, the Wendat dismantled the Confederacy and left their homeland along the shores of the Saint Lawrence River for Gahoendoe Island in 1649.[34] But, a combination of persistent Haudenosaunee attacks and severe droughts that led to starvation, forced the tribes to reconsider their future.[35] Consequently, the Wendat employed different movement strategies in an effort to guarantee their survival; while some chose to join neighboring Anishinaabe and Haudenosaunee villages, others made the decision to re-establish their communities elsewhere. In 1671, for example, one group moved west towards Michilimackinac where they lived until they relocated to Detroit three decades later and another faction moved to Ohio, Kansas City, and Oklahoma.[36] A second group, a significant portion of whom were Christian converts seeking military protection from the French following the breakdown of their alliance, moved to l'Île d'Orléans (1651-1656), Québec (1656-1668), Sainte-Foy (1669-1673), and Ancienne-Lorette (1673-1697) before permanently settling in Jeune-Lorette, a town just outside of Québec City, in 1697.[37]

Although the Wendat continued to exist following their move to Gahoendoe Island in 1649, few scholars have examined them past the seventeenth century. According to historians Kathryn Magee Labelle and Thomas Peace, this gap in the scholarship is founded on the assumption of a Wendat demise following a series of relocations to the United States of America (USA) and within the province of Québec.[38] As a result, these authors maintain that this trope essentially removed "[…] Indigenous peoples and cultures from North American life", which in turn eliminated them from the historical narrative.[39] There are a number of scholars, however, such as Denys Delâge, Jocelyn Tahatarongnantase Paul, Julie Rachel Savard, and Alain Beaulieu

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[32] Beaulieu, et al., *Les Wendats du Québec*, 55.
[33] Ibid. 55.
[34] Labelle and Peace, "Introduction," 5. Today, Gahoendoe Island is known as Christian Island and this area is the home of the Beausoleil First Nation. For more information see "Establishment of Sainte Marie II on Gahoendoe (Christian Island)," Community Stories, last modified 2018, http://www.virtualmuseum.ca/community-stories_histoires-de-chez-nous/story-of_histoire-de-ste-marie-ii/story/establishment-sainte-marie-ii-gahoendoe-christian-island/
[35] Ibid. 5.
[36] Ibid. 5.
[37] Jocelyn Tahatarongnantase Paul, "Le territoire de chasse des Hurons de Lorette," *Recherches Amérindiennes du Québec* 30, no. 3 (2000): 5.
[38] Labelle and Peace, "Introduction," 7.
[39] Ibid. 6.

who, alongside Labelle and Peace, argue against this assumption. While the particular focus of each author varies, their works maintain that a certain amount of continuity existed among the Wendat in Jeune-Lorette due to the community's ability to adapt to the changing economic, political, and social circumstances of the eighteenth, nineteenth, and twentieth centuries. As the Seigneurial system expanded under the French Regime and the Canadien population continued to increase, the area underwent significant geographic changes. As a result, members of the Wendat community gradually shifted their primary mode of subsistence from agriculture to hunting.[40] For instance, Denys Delâge states that "au début du XVIII^{e} siècle la chasse occupait une place centrale dans la vie des Hurons de Lorette et selon un calendrier bien réglé."[41] This is significant because this illustrates the first major economic shift that occurred among the Wendat of Jeune-Lorette and highlights the community's ability to adapt to different circumstances.

Beginning in the mid-nineteenth century, the rapid expansion of industrialization substantially altered the Wendat territory. More specifically, historian Jocelyn Tahatarongnantase Paul explores how the hunting territory of the Wendat changed following the 1888 opening of the railway linking Québec City and Lac Saint Jean, thereby granting non-Aboriginal people access to the land and increasing the number of people coming in and out of the area.[42] Consequently, this method of transportation brought Indigenous and non-Indigenous hunters into conflict as they competed for limited resources. In turn, this augmented the number of confrontations between settlers and Wendat community members who came to rely on hunting for survival.[43] Moreover, Paul argues that the combination of Québec game laws in the late nineteenth century coupled with the creation of private hunting clubs such as "le Triton (1886), le club Stadacona (1886) et le Tourili (1889)" further strained limited resources by adding additional competition.[44] In 1895, the establishment of the Laurentian National Park added yet another obstacle for Wendat hunters by preventing them from accessing the area, while simultaneously reducing their land base.[45] Even though provincial authorities initially tolerated the hunting practices of community members, by 1910, these actions were no longer

[40] Paul, "Le territoire de chasse," 6.
[41] Denys Delâge, "La tradition de commerce chez les Hurons de Lorette-Wendake," *Recherches Amérindiennes du Québec* 30, no. 3 (2000): 35.
[42] Paul, "Le territoire de chasse," 9.
[43] Julie Rachel Savard, "L'apport des Hurons-Wendat au développement de l'industrie du cuir dans le secteur de Loretteville aux XIXe et XXe siècles," *Les modernités amérindiennes et inuite* 8, no. 1 (2005): 72.
[44] Paul, "Le territoire de chasse," 9.
[45] Ibid. 9.

accepted and as a result, a number of Wendat men were fined and imprisoned for hunting violations.[46]

In response to industrialization, the Wendat gradually incorporated manufacturing into their economy. Although it was initially used to supplement subsistence hunting practices, it eventually formed a fundamental part of the community's economy. In fact, historian Julie Rachel Savard argues that the Wendat survived this challenging time period because of the community's capacity to adapt its economy to the changing reality.[47] As a result, a number of local companies were founded on the reserve by community members looking to succeed in the new market. Focusing specifically on local businesses in Loretteville, the author demonstrates how the Wendat benefited from the booming leather industry by successfully blending together traditional artistic practices with European manufacturing.[48] For example, Maurice E. Bastien founded his leather goods company, Bastien Bros, in 1826 and production focused primarily on moccasins, snowshoes, and canoes.[49] Over the years, Bastien's business remained successful and net profits continued to increase well into the twentieth century. For example, in 1882, the company made between $500 and $1000 net profit, and by 1930, Bastien's company was generating a total net revenue between $10 000 and $20 000.[50] This rise in profits was due in part to an increase in the non-Aboriginal population and their growing desire for Wendat products.[51] In particular, customers were interested in moccasins, which intensified the demand for these goods. Consequently, this resulted in the community importing materials in order to meet the growing demands and fulfil consumer needs.[52] Aside from moccasins, there was also a rising interest in leather gloves. Wendat community member P. B. Savard, a moccasin manufacturer, capitalized on this moment and joined the leather glove industry when he opened his business in 1896.[53] Even though Savard was one of the few to take a chance on this new

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[46] Ibid. 9.
[47] Savard, "L'apport des Hurons-Wendat," 84.
[48] Ibid. 74.
[49] Ibid. 74. Along with Savard, other scholars such as Catherine Cangany have also examined the importance of moccasin manufacturing for Indigenous communities. Although her research deals with an earlier time period, her focus on moccasin consumption by both Indigenous and non-Indigenous consumers in Detroit – and across the British Empire – reveals the important economic, political, and cultural context of this area. For more information see Catherine Cangany "Fashioning Moccasins: Detroit, the Manufacturing Frontier, and the Empire of Consumption, 1701-1835," *The William and Mary Quarterly* 69, no. 2 (2012): 265-304.
[50] Savard, "L'apport des Hurons-Wendat," 75.
[51] Ibid. 75.
[52] Ibid. 74.
[53] Ibid. 79.

industry, it proved to be so successful that it came to dominate the manufacturing sector of Loretteville well into the 1980s.[54] Thus, it is clear that members of the Wendake First Nation were not only actively engaging in this economy but their businesses were thriving in it as well.

The territorial and economic changes brought on by industrialization had a direct impact on the lives of Wendat men and women. On the one hand, it altered the political and social structures of the reserve by providing community members with different economic opportunities. For instance, in addition to being a successful businessman, Ludger Bastien was also elected chief of Wendake in 1929, a position he held until 1935.[55] In addition, Bastien also entered federal politics as an elected member of the Conservative party in 1924 before leaving three years later.[56] Therefore, Bastien's reputation as a successful business owner and member of the prominent Bastien family contributed to his social and political mobility both on the local and federal levels. By using this example, Savard illustrates that the economic prosperity that a number of Wendat families experienced throughout the late nineteenth to early twentieth centuries opened up important political opportunities. However, the bourgeoning capitalist economy altered the power relations between community members. In fact, even though this system facilitated social and political mobility for some such as the Bastien, Savard, Sioui, and Picard families, others were not as fortunate. As such, the community's wealth was concentrated in the hands of few families. Moreover, while a gradual decline in manufacturing initially began during the first couple of decades of the twentieth century, the socio-economic divide between families became even more apparent during the economic crisis of the 1930s. After the ripple effects of the Stock Market crash of 1929 made their way through the reserve, Bastien Bros was the only company to remain open, but it only employed a small number of community members.[57] Evidently, the highs and lows of the reserve's capitalist economy had a disproportionate impact on working-class Wendat men and women.

While the experiences of the Wendat at Jeune-Lorette were unique to the community, the changes it underwent coincided with the legal and territorial expansion of the Canadian state in the nineteenth century, which marked a significant turning point in the relationship between European settlers and First Nations. In particular, the evolution of the nation state, the way

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[54] Ibid. 79.
[55] Ibid. 81.
[56] Ibid. 81.
[57] Beaulieu, et al., *Les Wendats du Québec*, 275.

Aboriginal peoples were treated, and the creation of the legal framework was influenced by the economic, political, and ideological trends taking place at this time. As the lucrative fur trade slowly started to collapse, the colony in British North America underwent a dramatic economic shift, thus paving the way for the Province of Canada to shift its focus from hunting and trapping to agricultural production.[58] That said, there was a greater emphasis on farming and resource development, which required the acquisition of Indigenous lands. To this end, the colony underwent a process of rapid expansion. As such, British officials engaged in extensive treaty negotiations with Indigenous nations to acquire land for settlement. For instance, as Paul McHugh and Lisa Ford have written, "between 1784 and 1804, the British Crown used treaties to obtain millions of acres for colonial occupation by British emigrants."[59] Not only did this strategy work to attract British settlers, but it simultaneously reduced Indigenous peoples' land base by limiting their access to the resources located on ceded lands.

In conjunction with the economic shift from trade to agricultural production, there was a growing desire among colonial officials in the Province of Canada to establish permanent settlements that would be united under a homogenous British authority. As a result, prominent colonial officials began to rethink the colony's relationship with First Nations, which in turn, led them to question the latter's role in their newly imagined political reality. For instance, Herman Merivale (1806-74) argued that a combination of amalgamation and insulation should be used when dealing with Indigenous peoples.[60] This example clearly demonstrates that, in British North America, First Nations would no longer be viewed as distinct nations but rather, as subjects. Moreover, the reallocation of control over the British Indian Department (BID) from Great Britain to the colony reaffirmed this shift in colonial attitude. From the time the BID was founded in 1755, the British Empire engaged in diplomatic relations with Indigenous peoples while the day-to-day operations lay in the hands of colonial officials on the ground.[61] Thus, if men such as Herman Merivale adopted a change in attitude towards First Nations, it was reflected in the way the BID operated. According to historian Martha Elizabeth Walls, "the 1830

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[58] Paul McHugh and Lisa Ford, "Settler Sovereignty and the Shapeshifting Crown," in *Between Indigenous and Settler Governance*, ed. Lisa Ford and Tim Rowse (Oxford: Routledge, 2013), 25.
[59] Ibid. 25.
[60] Amanda Nettlebeck, Russell Smandych, Louis A. Knafla, and Robert Foster, *Fragile Settlements: Aboriginal Peoples, Law, and Resistance in South-West Australia and Prairie Canada* (Vancouver: UBC Press, 2016), 37.
[61] Robert S. Allen, *The British Indian Department and the Frontier in North America, 1755-1830* (Ottawa: National historic parks and sites branch, Parks Canada, Indian and Northern Affairs, 1973), 7.

transfer of the British Indian Department from military to civil administration signaled the loss of Aboriginals' military import and their definition as social and economic "problems" – expensive ones at that."[62] In other words, by the mid 1800s, it was clear that Indigenous peoples were no longer viewed as allies but rather as obstacles who stood in the way of colonial officials' political aspirations for the Province of Canada.

Alongside the economic and political changes sweeping across the British North American colonies during the nineteenth century, there were also important ideological developments that shaped the way Indigenous peoples were treated. One of the most influential beliefs was the notion of a Christian duty. This belief was rooted in the idea that Christian Europeans had a responsibility to civilize Aboriginal peoples and incorporate them into broader society through a process of assimilation.[63] This idea, however, was not specific to British North America. Rather, "it was an empire wide-task of heroic proportions and divine ordination encompassing the Maori, the Aborigine, the Hettentot, and many other indigenous peoples."[64] In other words, not only was the idea of a Christian duty assumed to be a God-given right but, it was prevalent throughout the British Empire, thereby affecting Native peoples on an international scale. In the Canadian context, this principle was understood as a paternal relationship between the government and Aboriginal peoples. More specifically, the state's paternal role was a result of the economic and social changes taking place within Indigenous communities and the effects they had on its members. For example, a combination of an increase in settlement and a decrease in game populations caused significant hardship to Aboriginal peoples living in the southern part of Upper Canada.[65] Consequently, the Secretary of State for the Colonies, Sir George Murray, declared a change in policy in 1830, which highlighted the need to focus on ameliorating living conditions for Indigenous people through religion and education.[66] Although this statement laid the seeds for future aggressive assimilation tactics, it was not until after Confederation that assimilation was officially adopted as part of the Canadian government's policy. For example, in 1880, Alexander Morris, one of the government officials

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[62] Martha Elizabeth Walls, *No need of a chief for this band: The Maritime Mi'kmaq and Federal Electoral Legislation, 1899-1951* (Vancouver: UBC Press, 2010), 60.
[63] John S. Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879 to 1986* (Winnipeg: University of Manitoba Press, 1999), 6.
[64] Ibid. 6.
[65] Ibid. 11.
[66] Ibid. 11.

who played a key role in negotiating the treaties on the prairies, stated "let us have Christianity and civilization among the Indian tribes; let us have a wise and paternal government … doing its utmost to help elevate the Indian population […]"[67] This sentiment highlights the assumption on which the Canadian government was operating on; it portrayed the federal government as a father who was responsible for the Christianization and civilization of his Indigenous children in order to ensure their absorption into mainstream society. Therefore, as a result of the economic, political, and ideological changes that occurred throughout the early to mid-nineteenth century, Indigenous peoples were conceptualized as a problem that needed to be addressed.

In order to solve the so-called "Indian Problem" and guarantee the success of the growing Canadian state, the Province of Canada committed itself to creating a legislative framework that would allow government officials to regulate Indigenous peoples.[68] To this end, the state enacted various pieces of legislation in the lead up to Confederation in 1867. For example, in 1850, the government of the United Canadas created a legal definition for the term "Indian" for the first time when it passed an *Act for the Better Protection of the Lands and Property of the Indians in Lower Canada*.[69] According to this law, as summarized by Ted Binnema, a legal "Indian" was defined in four ways:

> First, all persons of Indian blood reputed to belong to the particular Body or Tribe of Indians interested in such lands, and their descendants. Secondly, all persons intermarried with any such Indians and residing among them, and the descendants of such persons. Thirdly, all persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such. And fourthly, all persons adopted

[67] Ibid. 6.
[68] Throughout the nineteenth and twentieth centuries, "Indian Problem" referred to the assumption that the disadvantaged economic position of Indigenous peoples was a result of their cultural backwardness. As such, the Department of Indian Affairs implemented various assimilationist strategies such as educational programs and Christianization teachings with the goal of transforming Indigenous peoples into self-sufficient Canadian citizens. What this assumption failed to recognize, however, was the role of colonialism in creating this situation. In particular, the impact of territorial dispossession coupled with the consequences of cultural and social erosions were not taken into consideration by government officials. In other words, contrary to what reformers insinuated, First Nations' economic hardships were not due to an inherent cultural flaw but rather the result of generations of colonialism. For more information on how colonial education such as Residential Schools were implemented in Western Canada as a way to solve "the so-called Indian Problem" see Sarah de Leeuw. "'If anything is to be done with the Indian, we must catch him very young': colonial constructions of Aboriginal children and the geographies of Indian residential schooling in British Columbia, Canada." *Children's Geographies*, 7, no. 2 (2002): 123-140.
[69] Ted Binnema, "Protecting Indian Lands by Defining *Indian*: 1850-1876," *Journal of Canadian Studies*, 48, no. 2 (2014): 6.

> in infancy by any such Indians, and residing in the Village or upon the lands of such Tribe or Body of Indians, and their descendants.[70]

This law signals an important moment in the development of the Canadian state because it reflects the government's growing political power and its ability to establish a legally defined group of people, which would then allow them to regulate their existence. Even though this act failed to include Upper Canada in its legal purview, it laid the groundwork for all future legislative initiatives. Seven years later, colonial officials reasserted their sovereignty when the government passed the *Gradual Civilization Act* of 1857. Not only did this law reaffirm the legal definition of "Indian" that was established in 1850, but it explicitly stated that its purpose was to "encourage the progress of Civilization among the Indian Tribes in this Province, and the gradual removal of all legal distinctions between them and Her Majesty's other Canadian Subjects, and to facilitate the acquisition of property and of the rights accompanying it, by such Individual Members of the said Tribes […]."[71] Under this law, any male "Indian", as defined by the 1850 legislation who was between the ages of twenty-one to forty, was sober, able to speak English or French, free from debt, and "sufficiently intelligent to be capable of managing his own affairs", would be eligible to apply for the franchise.[72] This law demonstrates the bureaucratic expansion of the state as the government sought to resolve the "Indian Problem" by defining a group of people and creating a series of legislation that would eliminate them as a distinct group.

The passage of the 1867 *British North America Act* (BNA) was a defining moment in the development of the Canadian state because it permanently enshrined Canadian sovereignty and affirmed the colony's jurisdiction over the lands and peoples within its borders. One of the key features of this act was the division of powers between federal and provincial government levels. According to section 91, for instance, the federal government was legally responsible for "Indians, and lands reserved for Indians."[73] In other words, First Nations located within the

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[70] Ibid. 11-12.
[71] *Gradual Civilization Act*, S.C. 1857, c 26, http://www.caid.ca/GraCivAct1857.pdf
[72] Enfranchisement was an integral part of the colonial government's assimilationist policy. At the heart of this strategy was the desire to transform Indigenous peoples into British subjects by eliminating Indian status along with the rights and obligations it entailed and replacing it with the same political, social, and legal rights as other subjects. As such, the *Gradual Civilization Act* (1857) outlined the process for Indian status removal and the various ways in which Indigenous men and women could lose their status. To consult the document, see *Gradual Civilization* Act, S.C. 1857, c 26, http://www.caid.ca/GraCivAct1857.pdf
[73] *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 91(24), reprinted in RSC 1985, https://www.canlii.org/en/ca/laws/stat/30---31-vict-c-3/latest/30---31-vict-c-3.html#document

Dominion of Canada, which at the time of Confederation included the provinces of Québec, Ontario, Nova Scotia, and New Brunswick, were now under the jurisdiction of the Canadian federal government. The *BNA Act* (1867) confirmed that Indigenous peoples were, in fact, no longer viewed as allies but rather as subjects under the purview of the British Crown. Similar to previous legislation, the *Gradual Enfranchisement Act* (1869) represented another display of Euro-Canadian political power by imposing Western European patriarchal values. For example, according to this law, "any Indian woman marrying any other than an Indian, shall cease to be an Indian within the meaning of this Act, nor shall the children issue of such marriage be considered as Indians within the meaning of this Act […]"[74] Thus, if an Indigenous woman married a non-Indigenous man, she lost her Indian status as did all future children born from that union.[75]

Finally, the *Indian Act* (1876) symbolizes the Canadian government's most comprehensive attempt to both solve the "Indian Problem" and assert its sovereignty. By consolidating all previous legislation relating to Indigenous peoples, Canadian officials created a framework that oversaw the lives of legal "Indians" from the moment they were born until their death. As a result, this law essentially created the "Indian" as a separate legal category that was both defined and regulated by the Canadian government. Moreover, this law gave the government the power to regulate identity, families, property, reserves, lands, resources, band politics, money, religion, cultural ceremonies, criminal offences, and enfranchisement. For example, according to section 5, the "Superintendent-General may authorize surveys, plans, and reports to be made of any reserve for Indians, shewing and distinguishing the improved lands, the forests and lands fit for settlement, and such other information as may be required; and may authorize that the whole or any portion of the reserve be subdivided into lots."[76] In other words, government officials essentially controlled the reserve lands and were permitted to make decisions about its usage without consulting the community who lived on that piece of land, even though they would be directly affected by any change. This type of state intrusion into the lives

[74] Binnema, "Protecting Indian Lands," 23.
[75] For one example about how the patriarchal principles entrenched in the Indian Act shaped Indigenous women's treatment by both the state and its various institutions see Joan Sangster. "Criminalizing the Colonized: Ontario Native Women Confront the Criminal Justice System, 1920-60." *The Canadian Historical Review*, 80, no. 1 (1999) 32-60.
[76] *Indian Act, 1876,* S.C. 1876, c 18, s 5, https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/1876c18_1100100010253_eng.pdf

of ordinary people was unprecedented, and therefore, this act symbolizes the power of the Canadian state and its capacity to forcefully assert its jurisdiction.

In order to enforce Canada's assimilationist policies, the federal government created various institutions such as the Northwest Mounted Police (NWMP) and the Department of Indian Affairs (DIA). To begin, *An Act Respecting the Public Lands of the Dominion* (1872) established the NWMP and listed their primary roles as "police, constables, judges, and courts and in the following year as stipendiary magistrates."[77] Prior to this, there was no central policing system and instead "the military was used to establish control; paramilitary forces that bridged military and civilian policing styles were employed to suppress violence and disorder; and when a settler society was achieved, civilian policing functioned to prevent crime."[78] However, given the government's desire to assert its sovereignty on the prairies, a visible Canadian presence was necessary. In particular, this act and the creation of the NWMP emerged because Prime Minister John A. Macdonald worried about the potential American threat to British Canadian sovereignty and possible conflicts between setters and Indigenous peoples.[79] As a result, upon their arrival out West, the NWMP took on a variety of responsibilities. For example, officers "[…] fought prairie fires, controlled survey and railway construction crews, identified and controlled diseases, collected custom duties, brought news and veterinary sources, compiled meteorological and agricultural records, and assisted settlers in adjusting to prairie life."[80] Thus, NWMP members occupied various positions in the communities.

In addition to these roles, an important part of the force's mandate included regulating First Nations and Métis living out west. In the early years of its inception, the police force perceived itself as a mediator between Indigenous peoples and settlers at a time when the former still outnumbered the latter.[81] As a result, the NWMP were limited in the amount of power they had, which in turn restricted the effect of their presence in people's everyday lives. However, by the end of the nineteenth century, there was a significant shift in policing practices vis-à-vis Indigenous peoples on the prairies following the Northwest Resistance of 1885.[82] More specifically, the federal government argued that "securing colonial authority was best served by a

[77] Nettlebeck, et al., *Fragile Settlements*, 53.
[78] Ibid. 44.
[79] Ibid. 54.
[80] Ibid. 55.
[81] Ibid. 54.
[82] Ibid. 65.

policing strategy of Aboriginal containment, supported by the roles of the police force in facilitating treaty making […]"[83] In other words, the government strongly believed that surveilling Aboriginal peoples would allow them to contain potential Indigenous uprisings, which in turn, also served to reassert their jurisdictional sovereignty over the area. As part of this new policing strategy, the NWMP began monitoring Aboriginal movement. For instance, the large Blood Reserve located close to the United States (US) border was the site of a strong NWMP presence where officers were instructed to use any means necessary while persuading community members against constantly moving around.[84] Thus, by conceptualizing Indigenous peoples as potential threats to law and order, Canadian officials justified increased state intervention and surveillance.

A critical part of this new policing strategy included curtailing the practice of cross-border horse raids. According to legal historian Shelley Gavigan, horse raids were an important part of Indigenous warfare, where the main goal was to acquire as many animals as possible from the enemy.[85] From the point of view of the Canadian government, this practice was particularly frustrating because communities who engaged in these activities did so with little regard to the Canada-US border.[86] As such, in order to discourage this practice and deter others from engaging in it, the Canadian government reconceptualized horse raiding from the lesser offence of theft to the more serious crime of smuggling; essentially preventing Indigenous peoples on the prairies from retrieving stolen goods from the United States and bringing them back into Canada.[87] Moreover, since young Indigenous men were the main participants in horse raids, they quickly came under the watchful eye of the NWMP. When they were caught by the police, the punishments they received were "particularly harsh, ranging from two to five years of incarceration with hard labour."[88] Given the severity of the sentence, it is clear that not only was this meant to be a deterrent but, it also worked to bolster Canadian sovereignty over Indigenous peoples. Thus, these examples illustrate the growing power of the state and its ability to insert itself into the lives of Aboriginal peoples.

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[83] Ibid. 62.
[84] Ibid. 65.
[85] Shelley Gavigan, *Hunger, Horses, and Government Men: Criminal Law on the Aboriginal Plains, 1870-1905* (Vancouver: UBC Press, 2012), 78.
[86] Nettlebeck, et al., *Fragile Settlements*, 66.
[87] Gavigan, *Hunger, Horses, and Government Men*, 78.
[88] Nettlebeck, et al., *Fragile Settlements*, 66.

Along with the creation of the NWMP in 1873, the Canadian government also strengthened the role of the Department of Indian Affairs (DIA) after control of this institution was transferred to them by the British Crown in 1880. Overall, the main function of the DIA remained the same. In fact, this department continued to hold exclusive jurisdiction over issues relating to Indigenous peoples. However, there was a stronger emphasis on using department representatives as tools to enforce the provisions of the *Indian Act* (1876) and encourage the gradual assimilation of First Nations. As employees of the federal government, Indian agents "were expected to provide reliable data to facilitate informed decision-making, and then to carry out the policies and instructions of their superiors at headquarters."[89] In other words, Indian agents were expected to implement the policies they helped to create by collecting relevant information and passing it on to their superiors. On the surface, these tasks seem fairly straight forward, however, recent contributions to the scholarship have challenged this simplistic view of Indian agents by revealing that their roles were a lot more nuanced. Shifting the analytical focus to the Indian agents themselves, Robin Jarvis Brownlie explores this topic by examining how conditions on the ground influenced the way these government officials implemented the directives they received from Ottawa. Based on her analysis, she argues that, although Indian agents represented the colonial state, they also had to balance their responsibilities to the government with the demands of the First Nations under their jurisdiction.[90] Thus, Brownlie concludes that Indian agents took on multiple roles because they "exercised direct control over the community while simultaneously acting as a social worker, credit and loan officer, and intermediary with non-Native society."[91] In other words, Indian agents, were responsible to both the government and the Indigenous peoples under their authority. Similar to Brownlie, Amanda Nettlebeck also sheds light on the multifaceted roles of Indian agents, including how the law was used to bolster the authority of these government employees. For instance, depending on the reserve's location and its relative ease in accessing the judicial system, Indian agents were often granted magisterial powers that allowed them to adjudicate offences under the *Indian Act*

[89] Robin Brownlie, "Man on the Spot: John Daly, Indian Agent in Parry Sound, 1922-1939," *Journal of the Canadian Historical Association* 5, no. 1 (1994): 66.
[90] Robin Jarvis Brownlie, *The Fatherly Eye: Indian Agents, Government Power, and Aboriginal Resistance in Ontario, 1918-1939*. (Don Mills: Oxford University Press, 2003): viii.
[91] Ibid. 150.

(1876).[92] As such, even though Indian agents were not police officers, they were given law enforcement powers, in turn allowing them to enforce government policy.

The repercussions of state expansion are reflected in the increased number of encounters between First Nations and the Canadian justice system. In fact, as behaviors that were once part of Indigenous peoples' regular routine gradually came under the purview of colonial law, they often found themselves the subject of legal investigations. As a result, Indigenous people such as Albert Sioui, the 70-year-old Wendat man charged with stealing wood in 1932, were brought into the criminal justice system for engaging in practices that were now considered illegal. Although the power dynamics between Indigenous peoples and state institutions played out in various forums, the courtroom provides a unique lens to examine the application of colonial law vis-à-vis Indigenous peoples. More specifically, the documents that were produced during these encounters shed light on the complex power relations between Indigenous peoples and the state. The analytical value of these sources has been discussed by several scholars, including Franca Iacovetta and Wendy Mitchinson. According to both authors, the richness of these files "[…] reveal the vulnerability of many in the past, but also illustrate the resilience of individuals."[93] As such, they grant researchers a window into the nuanced relationship between state institutions and regular citizens. However, Iacovetta and Mitchinson caution against viewing these records at face value. Instead, they emphasize the importance of recognizing these documents as being the product of certain peoples and institutions with particular goals in mind.[94] Nevertheless, court cases demonstrate how "certain populations became subject to the institutional power of […] the law […]"[95]

This thesis draws on a total of thirty-four court cases, to explore the implementation of Canadian criminal law and the different ways in which Indigenous people navigated the judicial system during the interwar period.[96] In particular, it argues that the law operated as a tool of colonial control that was used to reinforce the racial distinction created by the 1876 *Indian Act* when the "Indian" was defined as a separate legal category. For the Wendat, their racialization

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[92] Nettlebeck, et al., *Fragile Settlements*, 105.
[93] Franca Iacovetta and Wendy Mitchinson, introduction to *On The Case: Explorations in Social History*, ed. Franca Iacovetta and Wendy Mitchinson (Toronto: University of Toronto Press, 1998), 6.
[94] Ibid. 13.
[95] Ibid. 6.
[96] This does not include the handful of cases with non-Indigenous defendants that I draw from to highlight the differential treatment the Wendat experienced before the court.

manifested itself in the types of crimes they were charged with and their unequal treatment before the law. Thus, even though Canadian law was purported to be universal, the legal system justified and enforced the "Indian" as a separate and subordinate class. At the same time, this thesis reinforces the notion that the Wendat – like other Indigenous peoples – were not passive victims of colonialism. Rather, they engaged with the judicial system, especially when it came it negotiating and renegotiating their role within the colonial framework. As such, while this thesis contributes to the existing scholarship on colonialism and the law, it also fills the gap in the scholarship that fails to reconcile both themes of racialization and agency.

Organized thematically, this thesis is divided into three chapters. The first section explores the impact of federal and provincial wildlife management strategies on the Wendat. More specifically, it focuses on how game laws, land leases, fishing permits, and protection clubs worked together to restrict the Wendat's access to their traditional hunting territories. As such, I draw from a total of seven court cases to argue that the criminalization of their traditional economic, subsistence, and cultural practices contributed to their territorial dispossession and prevented them from engaging in activities that had sustained the community for generations. Continuing with the theme of racialization, in chapter two, I analyze the legal implications of the state's social and moral regulations tactics on the Wendat. In particular, this section examines how the federal government's assimilationist policies criminalized the Wendat for engaging in behaviours that were deemed inappropriate according to Euro-Canadian standard. Based on a total of seventeen court cases, I argue that the *Indian Act* was used as a pretext to bring the Wendat into the criminal justice system. In the final chapter, I move away from racialization to analyze the role of the Wendat as active historical agents who navigated the criminal justice system. Drawing from ten court cases, I maintain that the Wendat engaged with the legal system in three distinct ways: to mediate internal tensions, resolve intimate disputes between spouses, and to settle conflicts with non-community members. Finally, I conclude with a discussion on how these two seemingly contradictory themes – racialization and agency – can be reconciled.

Chapter 1: Economic, Subsistence, and Cultural Practices

Up until the turn of the nineteenth century, there was no centralized wildlife management strategy that spanned across Canada. In fact, conservation efforts were often governed by various local customs, and as such, approaches differed from one place to another.[1] For example, lawyer and legal historian Douglas Harris maintains that along the Pacific Coast in British Columbia, a number of fisheries were regulated by local Aboriginal legal frameworks where existing customs, guidelines, and laws worked together to monitor fishing practices.[2] Alongside their Indigenous counterparts, settler communities also developed their own conservation strategies. In Halifax, Nova Scotia, for instance, a group of urban sportsmen formed the Game and Inland Fishery Protection Society in 1852 with the goal of implementing conservation strategies.[3] In turn, these community-led approaches effectively placed wildlife management into the hands of the local Indigenous and settler populations. Moreover, these strategies were a product of the ideological frameworks that shaped the relationship communities had with their surrounding environment. For settlers in North America, for instance, historian Tina Loo maintains they were influenced by William Blackstone's notion that wildlife was considered "common property", and therefore, all individuals, regardless of their social status, were entitled to harvest these resources subject only to limitations in the name of public interest.[4] By contrast, given the diversity of Indigenous communities, there was no monolithic strategy that applied to each one. Nevertheless, notions of personal and communal property, and the ownership rights they entailed formed the basis of many Indigenous conservation approaches. Among the Nuu'Chah'Nulth in British Columbia, for example, a combination of ownership and management strategies allowed related kin living in the same village to allocate resources and regulate access to their shared fisheries.[5] Thus, it is evident that both Indigenous and settler communities employed various conservation strategies.

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[1] Tina Loo, *States of Nature: Conserving Canada's Wildlife in the Twentieth Century* (Vancouver: University of British Columbia, 2006), 15.
[2] Douglas Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001), 3.
[3] Loo, *States of Nature*, 14.
[4] Ibid. 13.
[5] Harris, *Fish, Law, and* Colonialism, 19-20.

By the mid-nineteenth century, however, the growing Canadian state gradually expanded its regulatory powers by bringing wildlife management under its jurisdiction. Fueled in part by an increasing concern in declining animal populations due to overhunting, colonial officials sought to establish a centralized system over wildlife conservation.[6] An important aspect of this plan included enacting a series of legislation that would allow colonial authorities the ability to regulate hunting and fishing practices according to a specific set of rules. For example, in 1858, the *Fishery Act* implemented a lease and licence system in Lower Canada meant to monitor access to the colony's salmon rivers.[7] Therefore, this piece of legislation, and others like it, aimed to gradually transfer wildlife management from local communities to the state. Aside from dwindling animal populations, the federal and provincial governments were also influenced by the bourgeoning nature tourism industry in the United States and the desire to replicate the pristine and untouched natural spaces located south of the border.[8] For example, the creation of national parks, such as the one established in Banff in 1887, was designed to attract middle and upper middle-class members of society wishing to both participate in recreational hunting and fishing activities and escape the chaos of urban living.[9] In turn, not only did these designated green spaces generate significant revenue for neighbouring towns whose economies came to rely on the visiting tourists but it also allowed the state to extend its jurisdiction over more land. In an effort to enforce game laws, provincial governments established a surveillance system to better coordinate their conservation efforts. At the heart of this new endeavor included the appointment of game wardens following Confederation in 1867 who, as extensions of the state, were tasked with implementing provincial game laws.[10] Although provincial governments relied heavily on these individuals, they were granted limited resources, which resulted in many being poorly paid and working part time with little incentive to enforce state regulations.[11] Even with these challenges, this new wildlife management system reflected the state's increasing powers and

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[6] Loo, *States of Nature*, 16.
[7] Darcy Ingram, *Wildlife, Conservation, and Conflict in Quebec, 1840-1914* (Vancouver: University of British Colombia Press, 2013), 60.
[8] Ted Binnema and Melanie Niemi, "'let the line be drawn now': Wilderness, Conservation, and the Exclusion of Aboriginal People from Banff National Park in Canada," *Environmental History* 11 (2006): 724, https://doi-org.lib-ezproxy.concordia.ca/10.1093/envhis/11.4.724.
[9] Ibid. 726.
[10] Ingram, *Wildlife, Conservation, and* Conflict, 86.
[11] Ibid. 86.

their growing desire to bring vast amounts of land – and resources – under federal and provincial jurisdiction.

Similar to other provinces, Québec's game laws operated on the assumption that wildlife conservation fell under their jurisdiction, and as such, they maintained exclusive rights to implement their own sets of rules and strategies. Where the province deviates from its counterparts, however, is in the extent to which its approach centered on a collaborative partnership with groups of private citizens.[12] In fact, historian Darcy Ingram argues that the province's strategy of granting land leases and fishing permits was characterized by a "state-administered, privately regulated system of conservation" that conceded the benefits and responsibilities of fish and game management to a limited number of protectionist clubs and sporting associations.[13] Thus, while the province was responsible for creating and administrating a wildlife conservation strategy, the onus of enforcing state guidelines fell to small groups of men who acquired this right by purchasing land leases and fishing permits from the government.[14]

However, the opportunity to collaborate with the government on conservation management was not open to everyone. Rather, Ingram maintains that the private citizens who entered into a partnership with the province were a group of like-minded men with significant political, economic, and social power whose desire to protect and improve the quality of Québec's wildlife formed an important part of their conservationist approach.[15] Ingram argues that this patrician culture, which sought to establish, maintain, and reinforce a specific set of beliefs and practices that reflected these men's socio-economic status, formed the basis of Québec's first phase in wildlife conservation.[16] For instance, aside from hunting and fishing for sport, patricians also maintained that these practices benefited society as trade and food items.[17] In 1880, however, Québec entered into its second phase of wildlife management when a

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[12] Ibid. 18.
[13] Ibid. 18.
[14] Historian Daniel Rueck examines how, like Québec, the federal government also tried to implement a particular pattern of land usage among Indigenous peoples. In particular, Rueck argues that even though the 1885 Walbank Subdivision Survey never achieved its ultimate goal of eliminating the Mohawk reserve, it gradually undermined customary land practices and allowed for the prosecution of those who failed to abide by the territorial boundaries outlined in the map. For more information, see Daniel Rueck. "Commons, Enclosures, and Resistance in Kahnawá:ke Mohawk Territory, 1850-1900." *Canadian Historical Review* 95, no. 3 (September 2014): 352-381.
[15] Ingram, *Wildlife, Conservation, and* Conflict, 22.
[16] Ibid. 16.
[17] Ibid. 22.

narrower interpretation of hunting and fishing practices developed in relation to the economic potential of the province's natural resources.[18] During this time, Ingram argues that commercial and subsistence activities, which once played an integral part in patricians' overall plan to improve Québec's wildlife resources, fell out of favour with the new generation of sportsmen because these activities were conceptualized as obstacles to the province's economic development.[19] As such, commercial and subsistence hunting and fishing were no longer seen as necessary activities. Nevertheless, even though this second phase ushered in important changes, the exclusionary nature of Québec's conservation system persisted.

Unsurprisingly, among those left out of the province's wildlife management strategy were Indigenous peoples.[20] According to Ingram, the decision to exclude them from this system, was not accidental. In fact, Ingram maintains that this approach fit neatly into the federal government's assimilationist policy that sought to transform First Nations into productive citizens by having them abandon "primitive" economic practices in favour of more "civilized modes of production" such as agriculture.[21] Furthermore, while small scale subsistence hunting and fishing were permitted to prevent starvation, the economic and cultural practices associated with these activities were severely limited under Québec's new conservation system.[22] Consequently, provincial game laws that prioritized private leases and sport hunting not only undermined existing traditional Aboriginal practices but they also rendered some of them illegal.[23] This had a devastating impact on communities who relied on these activities for their survival. For the Innu and the Mi'kmaq, for instance, the introduction of fishing licences in the mid-nineteenth century essentially outlawed the salmon harvesting practices along the North Shore and Gaspé Peninsula that had sustained the locals for generations.[24] Evidently, the state

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[18] Ibid. 16.
[19] Ibid. 16.
[20] Multiple scholars have examined the exclusion of Indigenous peoples from provincial wildlife management strategies that developed throughout the mid-nineteenth century. Among them is historian David Calverley who analyzes how conservation and racism worked together to paint First Nations as a threat to wildlife, thereby justifying their exclusion. In his work, Calverley argues that Euro-Canadian understandings of liberty, property, and equality influenced political conflicts over wildlife in Ontario. In turn, gradually chipping away at Aboriginal treaty rights. For more information on how this process unfolded see David Calverley, *Who Controls the Hunt?: First Nations, Treaty Rights, and Wildlife Conservation in Ontario, 1783-1939*. Vancouver: University of British Columbia Press, 2018.
[21] Ingram, *Wildlife, Conservation, and* Conflict, 20.
[22] Ibid. 20.
[23] Ibid. 20.
[24] Ibid. 20.

believed that by using the law to limit Indigenous peoples' ability to harvest Québec's natural resources, it would eventually push them towards permanently adopting agricultural production. However, provincial legislation did not act as a deterrent for Indigenous peoples, such as the Wendat, who continued to hunt wildlife. Instead, Québec's Games Laws brought Wendat hunters into contact with the criminal justice system by outlawing their traditional economic, subsistence, and cultural practices, which contributed to their territorial dispossession and deprived them of their ability to engage in activities that had sustained their people for generations.

Divided into two main sections, this chapter draws from a total of nine cases, seven of which involve one or more Wendat offenders. The first part begins by analyzing the legal journeys of two Wendat men, Antoine Groslouis[25] and Gérard Sioui, who were both charged with violating Québec's game laws. More specifically, this section argues that by failing to recognize the diversity of the Wendat's hunting practices, the province's conservation strategy criminalized them while simultaneously denying them the ability to maintain their independence. Moreover, in an effort to highlight the impact of Québec's partnership with elite private citizens on the Wendat, Groslouis' experience is contrasted with a non-Indigenous sports hunter who was also charged for violating the province's game laws around the same time. The second part of this chapter examines how five Wendat men – Silvio Rhéaume, Marcel Guénard, Henri Sioui, Gustave Groslouis, and Théophile Groslouis – navigated the Canadian criminal justice system after they were accused of stealing trees. More specifically, this section explores how their criminalization reflected Québec's desire to regulate access to the province's natural resources. Similar to the first section, this part contrasts the legal journeys of these five men with three non-Indigenous offenders to shed light on the differential treatment the Wendat experienced. Finally, this chapter ends with a reflection on how the criminalization of these seven Wendat men fits into the larger pattern of racialization.

In an attempt to bring wildlife under provincial jurisdiction, Québec's game laws effectively denied the Wendat the ability to participate in the economic, subsistence, and cultural activities that had sustained the community for generations. The impact of the province's conservation strategy is seen most clearly in the criminalization of Wendat men who, despite

[25] Antoine Groslouis was charged with violating Québec's game laws twice, once in 1925 and again in 1926. In the first case, his surname was written as "Gros Louis" and in the second case, it was spelled "Groslouis". I have chosen to keep the same spelling in order to remain true to the original documents.

existing game laws, continued to engage in these practices. On October 10th, 1925, Barthélemie Lirette filed a formal complaint against Antoine Gros Louis of Loretteville accusing him of "chasse illégale".[26] According to the *plumitif*, the incident took place on May 13th of that year, but, for reasons that are not clearly indicated in the file, it was only brought to the attention of the authorities nearly five months later.[27] Nevertheless, the Honourable Judge Philippe-Auguste Choquette[28] signed off on Lirette's complaint and Gros Louis was escorted to the courthouse where he was granted a conditional release on a promise to appear for his hearing on October 16th.[29] The first day of the trial marked the start of a long judicial process in which Gros Louis appeared in court on thirteen separate occasions in the span of eleven months without entering a plea.[30] However, on May 15th, 1926, the defendant officially pled guilty to three counts of "chasse illégale" and the judge sentenced Gros Louis to pay a $5 fine for the first charge, $20 for the second, and $50 for the third.[31] Unable to pay the total fine of $75 plus applicable fees, a warrant for Gros Louis' imprisonment was issued on September 3rd, and the accused was taken to the local prison that same day to serve out his sentence of an unspecified duration.[32]

Unfortunately, specific details about the case such as Lirette's original statement describing the circumstances of the incident, the evidence that was presented at trial by the crown prosecutor, and the length of Gros Louis' prison sentence are all missing from the *plumitif*. As such, this case, like many others that will be explored throughout this thesis, present unique analytical challenges. Nevertheless, this court case demonstrates that by criminalizing the Wendat for engaging in practices that had sustained them for generations, Québec's game laws failed to take into consideration the Wendat's subsistence and economic reliance on hunting and trapping as well as their cultural attachment to these activities. Towards the end of the

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[26] *Lirette v Gros Louis* (10 October 1925), Québec 739 (Québec Cour des Sessions de la Paix)
[27] Ibid.
[28] Born on January 6th, 1854, in Beloeil, the Honourable Judge Philippe-Auguste Choquette studied law at the Université Laval before being called to the bar in 1880. Shortly thereafter, Choquette was elected into the House of Commons in 1887, where he served as the representative of Montmagny under the Liberal Party. In addition, he also held a seat in the Senate from 1904 to 1919, during which he was closely allied to Wilfred Laurier. In 1915, he was appointed to the Cour des sessions de la paix de Québec, a position he held until 1929. For more information on Judge Choquette, see "Choquette, Philippe-Auguste," Culture et Communications Québec, last modified 2013, http://www.patrimoine-culturel.gouv.qc.ca/rpcq/detail.do?methode=consulter&id=19578&type=pge#.X0W7ES2z2Rs
[29] *Lirette v Gros Louis*
[30] Ibid.
[31] Ibid.
[32] Ibid.

seventeenth century, the Wendat shifted their attention from agricultural production to hunting and trapping.[33] More specifically, during the spring and fall months, a number of male community members embarked on hunting expeditions that focused on the acquisition of marten, mink, beaver, weasels, and big game because aside from their economic value of their pelts, these animals represented an important food source for the Wendat.[34] However, as the state and settlers expanded deeper into the Wendat's hunting territory, wildlife was gradually pushed out or eliminated from certain areas altogether. As such, the Wendat, and other Indigenous communities across the country, gradually came to depend on western food staples such as flour, fat, tea, salt, and oatmeal that was provided for them by the state as a substitute for their traditional cuisine.[35] Given that these goods were strictly rationed by the Department of Indian Affairs (DIA), hunting and trapping allowed the Wendat to supplement the food they had. Thus, by criminalizing Gros Louis for engaging in these activities, the Québec Government essentially denied him the ability to supplement his diet with traditional modes of subsistence, thereby chipping away at his independence and further pushing him to rely on the federal government.

Moreover, aside from hunting and trapping being used as a method of sustenance, it was also deeply embedded into the community's economy. In fact, meat, hides, furs, and other animal parts could be sold for profit, exchanged for other goods, or transformed into final products. The importance of these practices is reflected in the Wendat reserve's source of revenue list during the same time period Gros Louis was charged with violating Québec's game laws. For example, throughout the 1920s, hunting, trapping, and fishing activities produced an average annual income between $1000 and $3400.[36] Even though the profits generated from other industries such as the manufacturing sector were significantly higher at this time, these activities illustrate the diversity and adaptability of the community's economy.[37] Although the

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[33] Jocelyn Tahatarongnantase Paul, "Le territoire de chasse des Hurons de Lorette," *Recherches Amérindiennes au Québec* 30, no. 3 (2000): 6.
[34] Christian Morissonneau, "Développement et population de la reserve indienne du Village-Huron, Loretteville," *Cahiers de géographie du Quebec* 14, no. 33 (1970): 343. https://doi.org/10.7202/020931ar.
[35] Alain Beaulieu, Stéphanie Béreau, and Jean Tanguay, *Les Wendats du Québec: Territoire, Économie et Identité, 1650-1930* (Québec: Les Éditions GID, 2013), 235.
[36] Ibid. 234.
[37] This assessment of the Wendat economy as diverse and adaptable fits into John Lutz's conceptualization of a "moditional" economy. According to Lutz, a "moditional" economy, is defined as a "[…] non-capitalist economy melded with welfare and intermittent wage work […]"(269) In other words, instead of relying solely on one source of revenue, Aboriginal peoples' economies drew from traditional subsistence practices coupled with periodic wage labour and social assistance. The author maintains that the financial aid aspect of this economic diversity became increasingly important as wage labour and provincial game laws gradually chipped away at Indigenous peoples'

income brought in by hunters and trappers was not essential to the community's survival, it did allow them to earn extra money. One of the most profitable industries for the reserve included the manufacturing of leather goods. More specifically, the Wendat used animal skins and furs for artisanal purposes to create moccasins and gloves, which were then sold to Indigenous and non-Indigenous customers.[38] In turn, this practice generated a significant amount of revenue for the reserve and companies, such as Bastien Bros who specialized in the production of leather goods. While the *plumitif* does not specify the exact circumstances of Gros Louis' arrest, it can be inferred that by restricting Gros Louis' access to hunting and fishing, his ability to acquire the necessary materials that were needed for manufacturing production were severely limited.

Furthermore, along with their subsistence and economic reliance on hunting and trapping, the Wendat shared a profound cultural connection to these practices. In fact, these activities were deeply woven into Wendat spirituality, identity, and society. According to Wendat historian Georges Sioui, at the heart of the Wendat belief system was the notion of the Sacred Circle of Life, which was founded on the interconnection between "[e]very life, material, or immaterial" and the importance of mutual respect to keep these relationships alive.[39] In this circular way of thinking, there was no hierarchy and living creatures, including humans and animals, were made equally.[40] Thus, when the Wendat engaged in hunting and fishing practices, they recognized the inherent value of the animals they killed and appreciated them for providing the community with the necessary nourishment they needed to survive. This way of thinking differed from Euro-Canadian ideology, which was founded on a strict hierarchical pyramid that placed human beings above animals, waterways, fauna, and vegetation.[41] More specifically, the human and non-human relationship was often thought of in terms of ownership and the understanding that as

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abilities to engage in subsistence economy. In turn, this allowed Indigenous peoples to use the money they received from the federal government to purchase goods they were unable to obtain through their traditional subsistence economy. Although Lutz's work focuses on First Nations residing on the west coast, this economic framework is applicable to the Wendat because the reserve's economy blended their traditional hunting and trapping practices with the manufacturing industry. For a more comprehensive historical analysis of Aboriginal peoples' involvement in Canada's capitalist economy, see John Lutz. *Makuk: A New History of Aboriginal-White Relations*. Vancouver: UBC Press, 2009.

[38] Julie Rachel Savard, "L'apport des Hurons-Wendat au développement de l'industrie du cuir dans le secteur de Loretteville aux XIXe et XXe siècles," *Les modernités amérindiennes et inuite* 8, no. 1 (2005): 74, https://doi.org/10.7202/1000895ar.

[39] Georges Sioui, *For an Amerindian Autohistory: An Essay on the Foundations of a Social Ethic*, trans. Sheila Fischman. (McGill: Queen's University Press, 1992), 9.

[40] Ibid. 9.

[41] Ingram, *Wildlife, Conservation, and* Conflict, 33.

property owners, individuals were entitled to certain rights and privileges in regards to their possessions. Thus, middle and upper-middle class sportsmen who wished to hunt and fish gained their ability to engage in these activities through provincial land leases or permits that gave them legal title to tracts of land and bodies of water.[42] From a Euro-Canadian perspective, however, Aboriginal hunting grounds, were not conceptualized as private property. In fact, since their territories were considered Crown Lands, these areas were managed as federal property, thereby denying Indigenous peoples the same property rights and privileges as their non-Indigenous counterparts.[43] Aside from being a fundamental part of their spirituality and identity, hunting and fishing was also vital to the transmission of knowledge. For instance, when sons were old enough, they joined their fathers on hunting and fishing trips where they learned valuable survival skills. The knowledge that was conveyed from father to son in these situations was critical because not only were important skills passed on but so too were the ideological frameworks that shaped these activities. In other words, these opportunities allowed fathers to pass on their wisdom to their sons and for their children to practice and embody these skills.

The following year, Antoine Groslouis once again found himself in a Québec courtroom. On March 30th, 1926, the game warden of Loretteville, François Cloutier, filed a formal complaint against Groslouis accusing him of three counts of "infraction à la loi de chasse de Québec."[44] According to his statement, Cloutier claimed that on or around March 12th on the National Park territory belonging to the St-Vincent Club "un nommé Antoine Groslouis […] a illégalement eu en sa possession, savoir pendant la saison de prohibition, de la viande d'orignal, le dit orignal étant une femelle […]"[45] In the same statement, Cloutier also accused Groslouis " [d'avoir] illégalement chassé, tué et pris des animaux à fourrure sur le territoire du Parc National des Laurentides, avoir eu en sa possession des trappes ou pièges dans les limites du dit parc et s'y être établi sans licence ou permis […]" and " [d']avoir chassé sur les terrains loués par bail au Club St-Vincent, formant partie du terrain du Parc National des Laurentides, sans permis du locataire ou de ses représentants et pendant la saison de prohibition […]"[46] Based on the complaint laid out before him, the Honourable Judge Philippe-Auguste Choquette issued an

[42] Ibid. 115.
[43] Ibid. 106-107.
[44] *Cloutier v Groslouis* (30 March 1926), Québec 247 (Québec Cour des Sessions de la Paix)
[45] Ibid.
[46] Ibid.

arrest warrant for Groslouis' apprehension the following day and within two weeks, the accused was in police custody.[47] On April 12th, Groslouis' preliminary hearing took place before Judge Choquette and the accused was granted a conditional release on a promise to appear in court for his preliminary hearing on April 20th at 10am.[48] In the meantime, Groslouis was released into the custody of Ovide Sioui, also from Loretteville, and the defendant paid $100 as collateral.[49] However, neither Groslouis nor his counsel were present and as a result, the session was adjourned and the Honourable Judge Arthur Lachance rescheduled it for three days later.[50] Over the next three weeks, Groslouis and his lawyer, Maître Lavigne, failed to appear in court on four separate occasions and it was only on May 15th, that the latter, appeared on behalf of his client, and pled guilty to all three charges.[51] The Honourable Judge Philippe-Auguste Choquette accepted this plea and set the sentencing hearing to May 26th, but neither party was present on that day so the hearing was rescheduled once again.[52] This occurred again before a sentencing hearing finally took place on May 28th, without the defendant and his counsel, in which the accused was sentenced to pay $100 fine for the first offence, $5 for the second, and $20 for the third; failure to pay this fine plus applicable fees, would result in a three months prison sentence.[53] Shortly thereafter, Groslouis paid the entire sum of $143.45 and the matter was settled.[54]

Similar to his previous encounter with the judicial system, this case illustrates that the Québec government's vision of wildlife conservation excluded the Wendat by not taking their usage of the land into consideration when developing their strategy. More specifically, *Cloutier v. Groslouis (1926)* sheds light on the negative impact the province's wildlife management policy coupled with the increase in nature tourism had on the Wendat's ability to continue their way of life. To begin, the idea of clearly defined open and closed hunting seasons was a staple feature of Québec's game laws. This concept was enshrined in law after the province expanded its existing legislation in 1888 by explicitly forbidding hunting throughout the months of March

[47] Ibid.
[48] Ibid.
[49] Ibid.
[50] Ibid.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Ibid.

to September for deer, caribou, moose, furbearing animals, and a number of game birds.[55] Over the years, various amendments to this act strengthened and expanded Québec's game laws. For example, in 1909, the province's hunting territory was divided into two main zones, stricter limits were placed on the number of animals and birds that could be hunted, the sale of game meat was only permitted during the open season, and government issued licences and permits became mandatory.[56] Enacted as part of the government's wildlife conservation policy, these initiatives conflicted with Wendat understanding of hunting as a nexus of interconnected activities that sustained families and communities throughout the year. Similar to Québec, the Wendat also hunted according to seasons, however, theirs took place during the spring and fall months, in which hunting parties sought to acquire enough game to bring back to their communities.[57] This different perspective is seen most clearly in the first offence Groslouis was charged with as it reveals crucial ideological discrepancies between Indigenous and non-Indigenous conservation practices. According to the case file, Groslouis was accused of being in possession of female moose meat in mid-March.[58] Even though Groslouis' hunt was in line with the Wendat spring hunting season, it contravened Québec's game laws that were rooted in a Eurocentric understanding of wildlife management that forbade spring hunting. Consequently, Groslouis was criminalized for both participating in traditional Wendat behaviours and for refusing to conform to Québec's vision of nature conservation.

Along with creating open and closed seasons, Québec's 1888 game laws expanded the existing land lease system, further restricting the Wendat's access to their traditional hunting grounds and exacerbating their territorial dispossession. As a pillar of their conservation strategy, this approach allowed the state to reinforce its jurisdiction over wildlife management by leasing parcels of land to groups of individuals who were given certain property rights including the ability to hunt and fish in that particular area. This practice began in the late 1850s after the province established a lease system on the salmon rivers of the lower St. Lawrence that coincided with the creation of the Québec City and Montreal factions of the Fish and Game Protection Club of Lower Canada in 1858 and 1859, respectively.[59] At the core of this practice,

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[55] John Donihee, *The Evolution of Wildlife Law in Canada, Occasional Paper No. 9* (Calgary: Canadian Institute of Resources Law, 2000): 48, http://dx.doi.org/10.11575/PRISM/34318.
[56] Ibid. 48.
[57] Paul, "Le territoire de chasse," 6.
[58] *Cloutier v Groslouis*
[59] Ingram, *Wildlife, Conservation, and* Conflict, 17.

club members would pay an annual fee and enforce Québec's game laws and in exchange, the government would take their interests into consideration when drafting hunting and fishing legislation, thereby creating a partnership between both parties.[60] Over the years, the province continued to strengthen and expand its lease system. For instance, in March 1883, the Québec government extended the current system by passing legislation that allowed them to grant temporary leases to the province's waterways.[61] In other words, it was now possible to obtain fishing leases for all of Québec's lakes and rivers for those who were both able and willing to pay the yearly fee. Although this was done with the goal of privatizing Québec's access to natural resources, it also allowed the government to generate revenue and prosecute offenders.[62]

Two years later, in 1885, Québec's lease system underwent another expansion. This time, the provincial government passed legislation that officially encouraged fish and game clubs to be incorporated into its wildlife management policy.[63] Similar to the public-private partnership established in 1858, Darcy Ingram states that this law promoted the creation of local associations that would take on the responsibility of protecting fish and game resources; thus, alleviating part of the government's spending costs while also indirectly recognizing its practical inability to supervise and manage the vast territory.[64] In turn, these clubs received exclusive hunting and fishing rights on parts of the province's land and waterways. Among them were middle and upper-middle class sportsmen whose vested interest in hunting and fishing were significantly different from the protectionist values of their predecessors.[65] In particular, they were more concerned about preserving their ability to continue practicing sport hunting and fishing than wildlife conservation.[66] To this end, government officials and sporting associations worked together to secure their interests.[67] Like seasonal hunting and fishing provisions introduced in Québec's game laws, land leases and exclusive game club permits also failed to take into consideration the Wendat's usage of these territories. In fact, Groslouis' case exemplifies the negative impact that this system had on Wendat hunters who were largely excluded from these

[60] Ibid. 18.
[61] Ibid. 106.
[62] Ibid. 107.
[63] Ibid. 108.
[64] Ibid. 108.
[65] Ibid. 109.
[66] Ibid. 110.
[67] For more information on the public-private partnership between government officials and local game clubs, see Darcy Ingram. *Wildlife, Conservation, and Conflict in Quebec, 1840-1914*. Vancouver: University of British Colombia Press, 2013.

groups. For example, Groslouis was convicted of hunting without a license on the territory belonging to Club St-Vincent.[68] Consequently, his criminalization was a result of the Québec government's failure to recognize and incorporate the Wendat into this land lease system.

Moreover, this court case highlights the impact of Québec's nature tourism and conservation movement on the Wendat way of life. By the turn of the twentieth century, Canadian officials were inspired by American National Parks to create wilderness spaces for middle and upper middle-class members of society to escape dense urban centers and indulge in nature. In fact, according to historians Ted Binnema and Melanie Niemi, national parks were less about protecting wildlife for humanitarian reasons and more about preserving game for sport hunting and tourism, which would generate important revenue for the state.[69] This is seen most clearly in the establishment of Banff National Park in 1887. For example, the authors maintain that following the completion of the Canadian Pacific Railway, an increased number of sportsmen, along with tourists and members of other sportsmen associations, flocked to the areas, thereby bolstering the local economy.[70] While the economy benefited from this increased presence, subsistence hunters, many of whom were Indigenous, were now in competition for the same limited resources. However, the political and economic influence of sport hunters was significant and many of them fought to restrict Aboriginal hunting in national parks.[71] In Québec, the Wendat faced a similar situation after the Laurentides National Park was established in 1895.[72] In particular, part of the Wendat's hunting territory was included in the national park, effectively denying them access to their traditional lands. The challenges this posed is seen most clearly in *Cloutier v. Groslouis (1926)* when the latter was charged with illegally hunting in the Laurentides National Park without a valid permit.[73] Given the circumstances of Groslouis' arrest, it is possible that he was hunting on traditional Wendat territory that was now part of the national park. Therefore, by failing to recognize the Wendat's ownership rights over hunting grounds, the Québec government actively participated in the territorial dispossession of the Wendat.

However, for non-Indigenous peoples also charged with violating sections of Québec's game laws, their legal experiences were significantly different compared to Wendat hunters. In

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[68] *Cloutier v Groslouis*
[69] Binnema and Niemi, "'let the line be drawn now'", 729.
[70] Ibid. 726.
[71] Ibid. 731.
[72] Ibid. 726.
[73] *Cloutier v Groslouis*

fact, part of this difference can be attributed to the fact that these individuals were primarily white middle and upper-middle class sportsmen whose political and economic influences were widely felt throughout the province. According to Binnema and Niemi, sportsmen were heavily involved in political activism because it was "understood to be an important responsibility […]"[74] As such, it was fairly common for sportsmen to be members of various clubs that reflected their interests.[75] Similar to Binnema and Niemi, Darcy Ingram explores the role of sportsmen in the political sphere. More specifically, he focuses on how their involvement in politics expanded after their associations were formally incorporated into Québec's game laws.[76] The importance of their political power is seen most clearly when examining its impact on Aboriginal hunting and fishing rights. For instance, after Québec's sportsmen associations voiced their displeasure at the government for not removing an exemption for Indigenous hunters in 1857, provincial officials quickly enacted an amendment the following year limiting Aboriginal hunting and fishing to subsistence practices.[77] Evidently, these individuals' status as prominent members of society who belonged to various clubs coupled with the public-private partnership they shared with the government gave these men direct access to the ears of state officials.

The political and socio-economic power of sportsmen is evident when analyzing their journey through the legal system. For example, on March 30th, the game warden of Loretteville, François Cloutier, filed a complaint against Dermott O. Gallagher, a civil engineer from the Donacona Paper Co. Ltd, on April 9th, 1926 accusing him of three counts of "infraction à la loi de chasse de Québec."[78] According to his statement, Cloutier alleged that on or around March 7th, on the territory leased by the Club St-Vincent in the Laurentides National Park, Gallagher "[a] illégalement, étant le chef d'une expédition pour exploration et arpentage pour la Cie. Donacona Paper Co. Ltd eu en sa possession, dans les tentes et camps servant aux opérations de la dite expédition […] de la viande d'orignal pour consommation, et de la peau du dit orignal […]"[79] In the same statement, Cloutier also accused Gallagher "[d']avoir illégalement, savoir pendant le temps de prohibition chassé ou accompagné un autre à chasser […]" and "[d']avoir

[74] Binnema and Niemi, "'let the line be drawn now'", 729.
[75] Ingram, *Wildlife, Conservation, and* Conflict, 45.
[76] Ibid. 108-110.
[77] Ibid. 85.
[78] *Cloutier v Gallagher* (9 April 1926), Québec 241 (Québec Cour des Sessions de la Paix)
[79] Ibid.

illégalement chassé, tué et pris un orignal sur le terrain du Parc National des Laurentides […]"[80] Based on Cloutier's complaint, the Honourable Judge Philippe-Auguste Choquette issued a summons on April 9th, which was personally delivered to the accused at his office by Ulric Gelly, the local bailiff for Québec City, on April 12th, 1926.[81] In this document, the charges against Gallagher were restated and he was requested to appear in court at 10am on April 16th.[82] When the preliminary hearing began, Gallagher was not present and as such, the Honourable Judge Arthur Lachance rescheduled for April 24th; when the court session resumed eight days later, the accused's absence forced another adjournment to April 30th.[83] However, before the hearing could begin, Gallagher submitted a signed statement to the court on April 28th, in which he pled guilty to the first offence and the two other charges were dropped.[84] Based on his confession, Judge Lachance sentenced Gallagher to pay the minimum $100 fine for this offence plus applicable fees, and by May 3rd, the entire sum of $123.65 was paid, with half going to the prosecutor and the rest given to Cloutier. [85]

Despite the fact that the cases against Groslouis and Gallagher share some similarities such as being accused by the same game warden for illegal possession of moose meat during the prohibited season and for hunting without a valid permit in the Laurentides National Park on the St-Vincent Club's land, there are also important differences.[86] In particular, these discrepancies explain the differential treatment Indigenous and non-Indigenous hunters experienced in the judicial system. This case reveals the value and respectability the Eurocentric sportsmen code of conduct placed on certain hunting practices, which was later adopted by state officials and unilaterally applied to all hunters in the province regardless of existing traditional customs. According to the case file, out of the three charges Gallagher was accused of, none were related to his methods of hunting.[87] Based on this, it can be assumed that the reason why Gallagher was not charged for the way he hunted was because his approach was considered appropriate by Euro-Canadian standards. For example, like the vast majority of his fellow sportsmen, Gallagher engaged in hunting for leisure and to acquire trophies while simultaneously adhering to the

[80] Ibid.
[81] Ibid.
[82] Ibid.
[83] Ibid.
[84] Ibid.
[85] Ibid.
[86] Ibid.
[87] Ibid.

hunter's code of ethics that was founded on the notions of fairness and restraint.[88] However, Groslouis' traditional hunting methods were criminalized by Quebec's game laws. This is seen most clearly in the fact that he was charged and convicted for being in possession of traps and for installing them in the National Park without a valid hunting licence.[89] By using hunting strategies that were considered undesirable according to Euro-Canadian standards, Groslouis became a target for state officials who sought to eradicate the usage of certain Indigenous hunting methods. As such, Groslouis was criminalized for refusing to conform to the Euro-Canadian sportsmen's code of conduct. More importantly, however, criminalizing aspects of Wendat hunting went beyond trying to eliminate traditional customs. In fact, it was part of the provincial government's refusal to accept – or even acknowledge – the existence of a Wendat hunting regime that followed traditional customs and understandings of property. Thus, under the guise of conservation, Québec's game laws completely ignored and dismissed Wendat hunting rights, thereby reinforcing Euro-Canadian perceptions of ownership. Moreover, as a subsistence hunter, Groslouis represented a way of life that both federal and provincial governments had been trying to discourage for decades. Thus, the law was used as a deterrent to dissuade the Wendat from continuing to practice their traditional ways of life.

Furthermore, this court case demonstrates that federal and provincial departments wielded a significant amount of influence over the legal process. More specifically, it reveals how outside departmental involvement shaped a person's judicial experience. For example, on April 27th, 1926, one day before Gallagher's preliminary hearing was scheduled to begin, L. Richard, the Deputy Minister of the Department of Colonization, Mines, and Fisheries sent a letter to the Crown Prosecutor, Edgar Rochette, stating that "si monsieur Galla[g]her désire plaider coupable, il pourra être condamné au minimum de l'amende soit $100.00, pour une offence, et vous êtes autorisé à demander au juge de suspendre la sentence dans les autres plaintes."[90] This decision directly influenced Gallagher's plea because the following day, he submitted a signed confession in which he pled guilty to the first charge and the two others were dropped. This intervention is significant because it demonstrates the ability of state departments to intervene in the judicial process, thereby altering the outcome. The fact that this was the Department of Colonization, Mines, and Fisheries is equally significant. By the turn of the

[88] Binnema and Niemi, "'let the line be drawn now,'" 730.
[89] *Cloutier v Groslouis*
[90] *Cloutier v Gallagher*

twentieth century, this department was heavily involved in promoting the benefits of hunting for leisure. In fact, this department capitalized on the growing interconnection between hunting and colonization by pushing for "la colonization sportive" as a way to encourage settlement and economic development in Québec.[91] With this in mind, it clarifies the reasons why Deputy Minister Rochette chose to intervene into Gallagher's judicial process.

A little over ten years later, Wendat hunters continued to be criminalized for engaging in traditional economic and subsistence practices. On June 1st, 1937, Odina D. Rhéaume, of Lac St-Charles, filed a complaint against "Village des Hurons" resident, Gérard Sioui, accusing him of "Infrac[tion] à la Loi de Chasse".[92] After accepting Rhéaume's complaint, the Honourable Judge Laetare Roy issued a summons requesting Sioui's presence in court on June 8th to face the charges against him.[93] When the preliminary hearing began, Sioui, accompanied by his lawyer, Maître Paul Lesage, pled not guilty and the trial was set for June 14th.[94] On the first day of trial, all parties were present while the crown prosecutor, Maître M. Dorion, presented evidence against Sioui.[95] The five following court sessions unfolded similarly until a decision was to be rendered on September 7th, however, Sioui was absent and the final verdict was postponed to September 14th.[96] Although Sioui was still not present, Judge Roy went ahead and delivered a verdict, finding the defendant guilty of violating Québec's game laws and sentencing him to pay a $5 fine plus applicable fees or serve fifteen days in jail.[97] That same day, Sioui was given until September 29th to pay the fine, but according to the *plumitif*, on September 20th, an arrest warrant was issued and the matter was resolved.[98]

Unlike the two previous court cases that were brought forward by the local game warden, this one is missing a significant amount of details and as such, it makes this case more challenging to analyze. However, based on the information that is provided in the *plumitif* coupled with what we know from similar cases and the extensive coverage this case received in

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[91] Ingram, *Wildlife, Conservation, and* Conflict, 114.
[92] *Rhéaume v Sioui* (1 June 1937), Québec 14402 (Québec Cour des Sessions de la Paix)
[93] Unfortunately, the original summons is not included in the *plumitif*. However, based on the one that was issued in *Cloutier v Gallagher* (9 April 1926), Québec 241 (Québec Cour des Sessions de la Paix), it can be inferred that it contained similar information; most notably, details about the charge Sioui was accused of, the fine he would have to pay if convicted, and instructions for him to appear in court to face the accusations.
[94] *Rhéaume v Sioui*
[95] Ibid.
[96] Ibid.
[97] Ibid.
[98] Ibid.

the local newspaper, *Le Soleil*, certain inferences can be made about how Sioui's experience unfolded before the courts. The charge against Sioui provides an important starting point. According to the *plumitif*, Sioui was accused of and convicted of contravening Québec's game laws.[99] No further details were provided in the *plumitif*, but an article published in *Le Soleil* on July 21st fills the gap by explaining that Sioui was accused of violating the province's game laws after he was found "en possession de deux peaux d'orignals *[sic]* en temps prohibé."[100] Similar to *Cloutier v. Groslouis (1926)*, Sioui's hunt took place during the Wendat's spring hunting season; nevertheless, because provincial game laws failed to recognize the legitimacy of the community's economic, subsistence, and cultural practices, Sioui was convicted of contravening the law. Thus, like Groslouis, Sioui was criminalized for engaging in traditional Wendat hunting practices. The ramifications of this judicial process, however, extended far beyond criminalizing certain behaviours. Rather, the provincial government's determination to punish Wendat hunters for disobeying Québec's game laws also served to dispossess them of their land base, thereby affecting their ability to maintain their economic independence. Consequently, by chipping away at the Wendat's ability to provide for themselves, the state contributed to the community's marginalization.

Along with analyzing the offence Sioui was charged with, it is equally important to examine the plea he entered. As stated in the *plumitif*, Sioui pled not guilty to one count of violating Québec's game laws but it does not indicate whether a defence was invoked.[101] Based on the research I conducted, I discovered that Sioui did indeed provide an argument for his defence; according to the same article published in *Le Soleil* on July 21st, the accused maintained that "[…] la nation à laquelle il appartient est régie par les seules lois fédérales. Or les lois fédérales permettent en tout temps, sans restriction, le droit de chasse aux Indiens, de sorte que M. Sioui soutient qu'il n'a pas commis d'illégalité."[102] Therefore, from his perspective, Sioui believed he was well within his right to engage in hunting practices despite the limitations imposed by provincial game laws. This legal argument is very interesting because by claiming that a nation-to-nation agreement between the Wendat and the federal government exempted him

[99] Ibid.
[100] "Les Hurons et le droit de chasser: Les Indiens ont-ils le droit de chasser en temps prohibé dans la province de Québec? – Tel est le point de droit que devra régler M. le juge L. Roy – Un intéressant test-case – Jugement en août," *Le Soleil*, Juillet 21, 1937, p 7.
[101] *Rhéaume v Sioui*
[102] "Les Hurons et le droit de chasser," 16.

from provincial game laws, Sioui was essentially contesting the jurisdictional authority of the Québec government. As a result, his argument indirectly called into question the province's right to manage the land – and wildlife – within its borders. Unsurprisingly, this argument was countered by the crown prosecutor, Maître Ross Drouin "qui en s'appuyant sur les textes fédéraux déclare que lorsque l'Indien sort de sa réserve, il est soumis comme les autres citoyens aux lois générales et que le statut provincial de la Chasse et Pêche s'applique à lui, comme aux autres, lorsqu'il est en dehors de sa réserve."[103] Evidently, both parties' arguments revolved around the scope of Québec's jurisdictional authority over provincial lands and the Wendat's place in the province's legal framework.

In addition to analyzing the offence Sioui was charged with and the plea he entered, an examination of the evidence presented at trial further demonstrates the racialization he faced. More specifically, it provides yet another example of the state's refusal to recognize and acknowledge the existence of Aboriginal hunting rights. For instance, in an effort to support Sioui's argument, his lawyer, Maître Paul Lesage, mailed a letter to the Department of Indian Affairs (DIA) requesting a copy of the 1933 debate that took place in the House of Commons, in which Senator Malcom declared that "[…] the federal government has made a treaty with them to give them certain treaty moneys, and in that treaty have agreed that Indians may fish and hunt so long as the grass grows and the water flows […]"[104] However, in their correspondence, not only did the DIA claim that they were unable to locate the document Maître Lesage requested, but they were also not aware of any existing treaty that guaranteed Wendat hunting rights.[105] This statement is important because even though it acknowledged that agreements between Indigenous peoples and the Crown existed, it completely dismissed the idea that they protected – let alone guaranteed – Wendat hunting rights. Although it is impossible to know whether or not

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[103] Ibid. 7.

[104] On February 21st, 1933, government officials gathered in the House of Commons to discuss Bill 21, which would amend section 107 of the Indian Act that dealt with enfranchisement. According to this proposed amendment, the Superintendent General would be allowed to bring together a committee of three members, consisting two officers from the department and one community member, to evaluate whether or not a legal 'Indian' merited enfranchisement. It was during this debate that Mr. Malcom acknowledged the existence of Aboriginal hunting and fishing rights. For more information on this debate see Canada, Parliament, House of Commons, Dominion of Canada Official Report of Debates of House of Commons, *Indian Act Amendment*, 17th Parl, 4th Sess, No II, (21st February 1933) at 2305, http://parl.canadiana.ca/view/oop.debates_HOC1704_02/1?r=0&s=1

[105] Beaulieu, et al., *Les Wendats du* Québec, 219.

the DIA ever really looked for a copy of the debate, this court case demonstrates how state institutions worked together to racialize the Wendat.[106]

The final two aspects of this case that need to be analyzed in order to fully grasp the racialized treatment Sioui experienced are the judge's verdict and the context that shaped it. According to the *plumitif*, Judge Roy found Sioui guilty of violating Québec's game laws and sentenced him to pay a $5 fine plus applicable fees or spend fifteen days in jail.[107] Although the *plumitif* does not go into detail about the judge's reasons for this decision, an article published in *Le Soleil* on September 14th provides a very interesting excerpt of the judge's six-page report in which he partially explains why he found the defendant guilty:

> Un fait domine la situation de l'Indien dans ce pays. Il y a 200 ans, il avait tout et aujourd'hui il n'a presque plus rien. On lui refuse les droits de citoyens et on le parque dans des réserves. À pareille enseigne, la loi souvent prime le droit. C'est l'histoire de toutes les conquêtes et les pays vainqueurs trainent tous ce boulet. L'injustice légalisée est encore de l'injustice, mais elle porte le manteau de la loi et lui emprunte sa force. Puis, peu à peu, par l'usage, l'usure, la durée et l'habitude, la loi devient le droit.[108]

Evidently, the first few sentences of this passage indicates that Judge Roy recognized the hardships of Indigenous peoples, especially in relation to their political and social exclusion from Canadian society, which had placed them at a significant disadvantage. However, he made it abundantly clear that he believed adhering to the letter of the law takes precedence over correcting perceived wrongs. In other words, Judge Roy prioritized positive law over natural law. Thus, even though he acknowledged that legalized injustice disguised as law was still injustice, he maintained that it would eventually come to be considered right. By applying this logic to Sioui's case, it demonstrates that Judge Roy saw himself as playing an important role in this process: one where, similar to colonizing nations, the judge would take on the burden of enforcing the law until the legalized injustices within it became acceptable. This understanding

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[106] This very same question was revisited by the Supreme Court of Canada (SCC) in 1990 in *R v Sioui*, after Regent Sioui, Conrad Sioui, Georges Sioui, and Hugues Sioui were convicted of violating ss 9 and 37 of the *Regulation respecting the Parc de la Jacques-Cartier* for cutting down trees and camping in an area of the park where these activities were not permitted. At trial, the men admitted committing these acts. However, they argued that because they were done for ceremonial purposes, a 1760 treaty signed by General Murray between the British and the Wendat protected their right to express their religious and cultural customs; as such, they maintained that they were exempt from adhering to these regulations, as stipulated in s 88 of the *Indian Act*. At the SCC, the judges ruled in the four men's favour, concluding that the 1760 agreement is considered a treaty under s 88 of the *Indian Act*. For more information on this case, see *R v Sioui* [1990] 1 SCR 1025.
https://www.canlii.org/en/ca/scc/doc/1990/1990canlii103/1990canlii103.html?resultIndex=1

[107] *Rhéaume v Sioui*

[108] "Les Indiens sont soumis à nos lois," *Le Soleil*, Septembre 14, 1937, p 1.

of the law reinforces the notion that punishing the Wendat for their economic, subsistence, and cultural practices was an integral part of bolstering federal and provincial legislation. This line of thinking is supported by a number of scholars, including Alain Beaulieu, Stéphanie Béreau, and Jean Tanguay. According to the three authors, Wendat hunting and fishing was initially tolerated and dealt with primarily by handing out fines.[109] However, by the turn of the twentieth century, this approach was abandoned and replaced in favour of one that involved harsher punishments.[110] More specifically, in order to deter members of the Wendat reserve from engaging in these activities, the authors maintain that the state routinely confiscated and destroyed the hunting tools of those who were caught.[111] While there is no definitive evidence that this happened to Sioui or Groslouis, it is certainly possible given that this was common practice among Québec game wardens at the time. In addition, Wendat hunting tools could also be seized and used against the accused in the courtroom as evidence. For example, according to the article published in *Le Soleil* on July 21st, Sioui was found in possession of two moose hides.[112] Given that the *plumitif* stated that evidence of an unknown nature was presented against the accused, it can be assumed that items such as meat, hides, or hunting tools were confiscated and later shown as physical proof of his transgressions.

Aside from hunting violations, the Wendat were also penalized for continuing to use natural resources; based on my case study, five members of the reserve were charged with stealing trees. The first incident took place on March 7th, 1933 when Silvio Rhéaume and Marcel Guénard from the "village des Hurons, Lorette" were charged with one count each of "vol d'arbres".[113] Appearing before the Honourable Judge G. Demers, both men pled guilty and that same day, the judge sentenced each one to either pay a $10 fine or spend ten days in prison if they were unable to afford the fee.[114] According to the *plumitif*, an arrest warrant was issued and Rhéaume and Guénard were taken to the local jail.[115] The next day, however, Guénard paid the fine and he was released while his co-defendant stayed behind to serve out his sentence.[116] Although the missing details make this case difficult to analyze, the information that is available

[109] Beaulieu, et al., *Les Wendats du* Québec, 216.
[110] Ibid. 216.
[111] Ibid. 216.
[112] "Les Hurons et le droit de chasser," 7.
[113] *Roi v Rhéaume and Guénard* (7 March 1933), Québec 8498 (Québec Cour des Sessions de la Paix)
[114] Ibid.
[115] Ibid.
[116] Ibid.

combined with what we already know about Wendat economic and subsistence practices sheds light on the importance of these two men's legal journeys. As stated in the *plumitif*, both defendants were charged with one count of stealing trees. As such, even though the circumstances of the arrest are unknown, some inferences can be made based on what we already know about traditional Wendat economic and subsistence practices. First, forests had an important role in the Wendat's way of life due to their versatility as an ecosystem. On the one hand, they were home to an abundance of wildlife, which provided an important source of food and economic subsistence for the Wendat. On the other hand, the trees inside the forests could also be used to create goods such as snowshoes, canoes, hunting cabins, traps, firewood, and tools and weapons.[117] In turn, these products could then be used by community members in order to facilitate their economic and subsistence activities or sold for a profit. Therefore, it could be assumed that it was related to the traditional activities they had undertaken for generations[118]; by denying these two men the ability to undertake economic and subsistence practice the state effectively limited the Wendat's capacity to maintain their independence.

Four years later, three other members of the reserve, Henri Sioui, Gustave Groslouis, and Théophile Groslouis were separately tried for stealing trees as part of an incident that took place in April 1937. According to the first case, on April 15th, Loretteville resident, Berthe O'Sullivan[119], filed a complaint against Henri Sioui of the "Village des Hurons" accusing him of "vol d'arbres".[120] After formally signing off on her statement, the Honourable Judge Laetare Roy issued a warrant for Sioui's arrest and by the following day, he was apprehended.[121] On April 16th, Sioui, accompanied by his lawyer, Maître Paul Lesage, stood before Judge Roy and when

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[117] Beaulieu, et al., *Les Wendats du* Québec, 235.
[118] For three other examples that support this inference, see *O'Sullivan v Sioui* (15 April 1937), Québec 14262 (Québec Cour des Sessions de la Paix), *O'Sullivan v Groslouis* (15 April 1937), Québec 14261 (Québec Cour des Sessions de la Paix), and *O'Sullivan v Groslouis* (15 April 1937), Québec 14260 (Québec Cour des Sessions de la Paix).
[119] Berthe O'Sullivan is the daughter of Henry O'Sullivan, a noted geographer and land surveyor in the nineteenth century who worked for the Québec Government, and Claire Picard, the daughter of Wendat Chief François-Xavier Picard. Given her father's job position, the O'Sullivan family had a vested interest in the forestry and the economic development of the north. However, these interests sometimes clashed with those of the Wendat. For instance, in 1884, Henry O'Sullivan was involved in a legal conflict with his brother-in-law, Paul Picard, who was trying to prevent O'Sullivan from selling reserve land to non-Indigenous peoples. When the judicial process finally reached its conclusion in 1893, Picard lost his case. That being said, Berthe's familiarity with land management and her knowledge of the legal system could have certainly influenced her decision to charge Henri Sioui, Gustave Groslouis, and Theophile Groslouis with stealing trees from her property. For more information on the O'Sullivan family, see "Archives Henry O'Sullivan." IEGOR, https://www.iegor.net/lot/100912/10713950
[120] *O'Sullivan v Sioui* (15 April 1937), Québec 14262 (Québec Cour des Sessions de la Paix)
[121] Ibid.

asked to enter his plea, the accused pled not guilty and the preliminary hearing was scheduled for one week later.[122] In the meantime, Sioui was granted a conditional release on a promise to appear in court.[123] When the case resumed on April 23rd, all parties were present for the start of the preliminary hearing, which reconvened on three separate occasions until April 30th and during each court session, the prosecutor, Maître Dorion, presented evidence of an unspecified nature against the accused.[124] For reasons that are not clearly explained in the *plumitif*, the matter was not settled until the new year when on January 20th, 1938, Sioui, along with his counsel, requested an expedited process that was approved by Judge Roy.[125] That same day, the accused pled guilty and the judge released him "par caut[ion] de Paix" of twelve months.[126]

Alongside Sioui, Gustave Groslouis' experience with Québec's judicial system was fairly similar. On the same day O'Sullivan filed a complaint against Sioui, she also accused Groslouis, from the "Village des Hurons" of "vol d'arbres".[127] This time, however, it was the Honourable Judge Hugues Fortier who signed off on the plaintiff's complaint and issued a warrant for Groslouis' arrest.[128] By the following day, Groslouis was apprehended by a local constable before appearing in front of the Honourable Judge Laetare Roy where he pled not guilty to one charge of stealing trees.[129] After the preliminary hearing was scheduled for April 23rd, Groslouis, like Sioui, was given a conditional release on a promise to appear in court.[130] When the court reconvened, all parties were present, including Groslouis who was accompanied by his counsel, Maître Lesage.[131] Over the next week, the court met on two separate occasions in which Maître Dorion, as the crown prosecutor, presented evidence against the accused and on April 30th, Groslouis was granted another conditional release.[132] For reasons that are not clearly explained in the *plumitif*, the case resumed later that year on October 23rd when Groslouis was back in a Québec courtroom requesting an expedited process.[133] After Judge Roy granted Groslouis' request, the accused pled guilty and he was given a suspended sentence until the matter was

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[122] Ibid.
[123] Ibid.
[124] Ibid.
[125] Ibid.
[126] Ibid.
[127] *O'Sullivan v Groslouis* (15 April 1937), Québec 14261 (Québec Cour des Sessions de la Paix)
[128] Ibid.
[129] Ibid.
[130] Ibid.
[131] Ibid.
[132] Ibid.
[133] Ibid.

resolved a year later on November 23rd after the Honourable Judge Hugues Fortier official released him.[134]

Like Sioui and Gustave Groslouis, "Village des Hurons" resident, Théophile Groslouis, was also charged with "vol d'arbres" following a complaint by Berthe O'Sullivan of Loretteville on April 15th, 1937.[135] After the Honourable Judge Hugues Fortier accepted the plaintiff's deposition, he issued a warrant for Groslouis' arrest and within two days, the accused was apprehended by local police.[136] On April 17th, appearing before Judge Fortier, and accompanied by his lawyer, Maître Lesage, Groslouis pled not guilty and, like Sioui and Gustave Groslouis, the defendant was granted a conditional release on a promise to appear in court.[137] When the preliminary hearing resumed on April 26th before the Honourable Judge Laetare Roy, Groslouis' experience was nearly identical to that of the two others charged for the same incident. In fact, during this session, and the subsequent one four days later, all parties were present when the crown prosecutor, Maître Dorion, presented evidence against Groslouis. However, on April 30th, after hearing the prosecutor's arguments, the case was adjourned and Judge Roy granted another conditional release to the accused.[138] Like Sioui and Gustave Groslouis, the case did not resume again until the new year when on January 20th, 1938, Groslouis and his lawyer requested an expedited process.[139] The Honourable Judge Roy accepted their request and that same day, Groslouis pled guilty to one count of stealing trees, in turn, the judge released him "Par caut[ion] de Paix" and the matter was finally settled.[140]

Even though the case file does not explicitly state that all three arrests were part of the same incident, these cases share important similarities. In particular, aside from being charged on the same day, by the same plaintiff, and with the same offence, Sioui, Gustave Groslouis, and Théophile Groslouis' experiences in the legal system were nearly identical. First, in all three cases, the judicial process was long and stretched out over several months. For example, in Gustave Groslouis' case, the matter was settled in November, seven months after he was initially arrested, whereas for Sioui and Théophile Groslouis, a final verdict was only delivered the

[134] Ibid.
[135] *O'Sullivan v Groslouis* (15 April 1937), Québec 14260 (Québec Cour des Sessions de la Paix)
[136] Ibid.
[137] Ibid.
[138] Ibid.
[139] Ibid.
[140] Ibid.

following year. Unfortunately, no information explaining the reasons behind these delays are given. Yet, all three men were the ones to request an expedited process, and once they were granted their request, they all pled guilty to the offence they were charged with. This is interesting because, perhaps entering a formal guilty plea was required in order for them to receive their expedited judicial process. If this is correct, it brings up the question as to whether or not these men pled guilty for the sake of solving this matter and no longer having the uncertainty hang over their heads. Finally, although Sioui, Gustave Groslouis, and Théophile Groslouis were released, they now had a criminal record and any future encounter with the judicial system could potentially increase their chances of receiving a harsher punishment because they would be considered repeat offenders.

Furthermore, similar to *Le Roi v. Rhéaume and Guénard (1933)* the circumstances of Sioui, Gustave Groslouis, and Théophile Groslouis' arrests were not indicated in the *plumitif*. However, two articles published in *Le Soleil* on September 16th and October 7th, 1937 shed light on what may have transpired. According to both pieces, all three men were charged with "couper et voler des arbres".[141] Although this statement is very brief, it implies that, like the two men arrested before them, all three men were most likely engaging in resource extraction by cutting and taking trees for personal use, as they had for generations. Nevertheless, the most important theme connecting all four of these cases is that it is evident that the Wendat's continued harvesting of forest resources clashed with the government's desire to exploit the province's natural resources. In particular, the Wendat's behaviours were at odds with large timber, forestry, logging, and mining companies who sought to maintain their undisputed jurisdiction over these resources. According to Darcy Ingram, during the eighteenth and nineteenth centuries, granting timber licenses to various industries was a well-established practice throughout the province.[142] In fact, these permits essentially gave companies a monopoly over a parcel of land in order to conduct their business, which in turn, generated a significant amount of revenue for Québec. The importance of these companies for Québec's economy increased significantly between 1880 and 1914 when the provincial government recognized the growing interest and profitability of Québec's forestry, mining, and hydroelectric resources.[143] Consequently, the presence of the Wendat came to be seen as an obstacle to the economic success of the province. This

[141] "Deux procès pour meurtre aux Assises," *Le Soleil*, September 16, 1937, p13.
[142] Ingram, *Wildlife, Conservation, and Conflict in* Quebec, 61.
[143] Ibid. 22.

conceptualization of the Wendat as being in the way of Québec's success is reflected in all four court cases where each member of the community was arrested for making use of the province's natural resources without prior government approval. Thus, the criminalization of the Wendat is significant because, similar to the game law violations that were committed by Groslouis and Sioui, the ability to exploit natural resources was not seen as an inherent right. Rather, it was viewed as a privilege that was granted – or denied – by the government. Aside from demonstrating how these court cases were at odds with Québec's goal to capitalize on the province's natural resources, they also illustrate the state's continued denial of Wendat property regimes. In fact, similar to Antoine Groslouis and Gérard Sioui, the arrest and conviction of Wendat men who harvested natural resources was a manifestation of the province's refusal to acknowledge – and accept – Wendat concepts of ownership. As such, the Wendat continued to experience prosecution for exercising their property rights.

For three non-Indigenous peoples charged with the same crime around the same time, however, their experiences in a Québec courtroom differed significantly from their Wendat counterparts. On January 5th, 1938, J. Omer Dion filed a complaint against Robert Robert, Paul Devarennes, and François Savard accusing them of "vol d'arbres".[144] After accepting the plaintiff's complaint, the Honourable Judge Laetare Roy issued an arrest warrant for the three men that same day. But, while Robert and Devarennes were apprehended by a member of the local police force, Savard's father, listed only as "Savard Sr.", was accidentally taken into custody and then quickly released.[145] Later that day, Robert and Devarennes appeared in front of Judge Roy and both men pled not guilty before they were granted a conditional release on a promise to appear in court for the start of their preliminary hearing.[146] When the court was back in session on January 12th, Robert, Devarennes, and Savard, who was eventually apprehended, appeared alongside their lawyer, Maître Bourget, before the Honourable Judge Hugues Fortier.[147] Unfortunately, the specific details of this hearing are not included in the *plumitif*, however, by the end of that session, all three defendants were given a second conditional release on a promise to appear in court on January 20th.[148] This began a two week period in which the

[144] *Dion v Robert, Devarennes, and Savard* (5 January 1938), Québec 15363 (Québec Cour des Sessions de la Paix)
[145] Ibid.
[146] Ibid.
[147] Ibid.
[148] Ibid.

hearing reconvened on two other occasions until the plaintiff's counsel, Maître Jules Royer, "présente une mot.[ion] verbale pour retirer la plainte."[149] Given that all three defendants were not in court that day, the motion was adjourned and rescheduled to February 25th.[150] When the case resumed, even though Robert was the only accused present, the Honourable Judge Arthur Roy formally accepted the plaintiff's request to withdraw the complaint and declared "qu'il met les 3 prévenus hors de cour."[151]

When compared to the three previous cases, *Dion v. Robert, Devarennes, and Savard (1938)* demonstrates how non-Indigenous offenders who were charged with similar offences were treated differently by the judicial system. First, all three defendants enjoyed a quick and efficient process. For example, Dion filed his complaint against Robert, Devarennes, and Savard on January 5th and by next month, he recanted his statement and the matter was settled outside of court.[152] This is significantly different from the experiences of Sioui, Gustave Groslouis, and Théophile Groslouis, whose judicial processes lasted months before a final verdict was reached. Based on this difference, it can be assumed that for the Wendat, at least in these three cases, legal processes took much longer. Furthermore, unlike in the previous cases, this matter was settled outside of court. For instance, after Dion put in a request to withdraw his complaint, Judge Roy formally dismissed the case.[153] By allowing this matter to be resolved outside of court, it ensured that all three accused would not have a criminal record. This is interesting because for the five other men – Rhéaume, Guénard, Sioui, Gustave Groslouis, and Théophile Groslouis – who were charged with the same offence, this was not an option. As a result, their arrest, trial, and conviction not only brought them into the Canadian judicial system, but it also labelled them as criminals. So, while the law was theoretically fair and impartial, it had the negative effect of defining Wendat claims and uses of the land as illegal. Subsequently, it turned these five men into criminals for pursuing traditional activities. Although they would not be considered dangerous offenders by any means, the existence of a criminal record could have profound consequences on the way in which the legal system would treat them in the future. For instance, should they be suspected of committing any other crime, their previous encounters with the law

[149] Ibid.
[150] Ibid.
[151] Ibid.
[152] Ibid.
[153] Ibid.

could be used as a justification to increase state intervention and surveillance either by detaining, arresting, or interrogating these men.

As I have demonstrated throughout this chapter, the criminalization of the Wendat for participating in economic, subsistence, and cultural practices contributed to their territorial dispossession while simultaneously depriving them of their ability to engage in activities that had sustained their communities for generations. To support this argument, I drew from a total of nine court cases, seven of which listed at least one Wendat defendant. Among those seven cases, five of them included offenders accused of stealing wood and in the remaining two, one defendant, who was tried on two separate occasions, was charged with violating Québec's game laws. These findings demonstrate that, regardless of the type of activity the Wendat engaged in, they were systematically prosecuted for harvesting the province's natural resources because they did not receive prior government approval. Thus, even though the Wendat operated under the assumption that their Aboriginal rights to hunt were both guaranteed and protected by the treaties their ancestors signed with the government, these criminal proceedings served to reinforce the notion that hunting and fishing practices were not inherent rights. Rather, they were privileges that one did not possess until it was granted by the state. The importance of reinforcing the government's position on Aboriginal treaty rights is reflected in the punishment Wendat offenders received. According to my case study, all seven Wendat defendants who were charged with violating Québec's game laws or illegally harvesting natural resources, were convicted. In fact, although three of those cases resulted in the defendant's conditional release, in the four remaining ones, all the offenders were either imprisoned or sentenced to pay a fine. By contrast, in the two cases that examine non-Indigenous offenders charged with the same infractions, neither one resulted in a prison sentence. Even though this represents a small number of cases, this study demonstrates that Wendat men were more likely to receive a harsher punishment than their non-Indigenous counterparts who were charged with the same crime.

Moreover, it is equally important to mention that all seven defendants were men. This obvious gendered division is significant for a number of reasons. First, this illustrates that several community members continued to engage in traditional activities despite repeated attempts by the federal and provincial governments to persuade them to abandon customary practices in favour of Euro-Canadian modes of subsistence. Therefore, their decision to continue practicing these activities could be a reflection of the persisting economic, subsistence, and cultural

attachment the Wendat had to harvesting natural resources. Second, this gendered division reflects a certain continuity in traditionally male activities. For instance, the fact that Wendat men continued to engage in economic, subsistence, and cultural practices illustrates that these activities did in fact continue into the twentieth century, albeit on a much smaller scale. In turn, the gendered nature of these practices explains Wendat women's lack of representation in this study. Finally, it is important to consider why there are not many cases that deal with hunting and fishing violations. On the one hand, this could be explained by the fact that, since the turn of the century, a number of community members had moved away from traditional practices – not necessarily because they no longer felt an attachment to them but because existing games laws coupled with the loss of their traditional lands made it difficult for the Wendat to harvest resources as they had before. Therefore, the men who once regularly practiced these activities were either no longer doing so at the same frequency or had stopped altogether. On the other hand, it is also possible that some incidents went unnoticed or unreported, perhaps because no one saw or there was not enough evidence to prove wrongdoing. Thus, it is certainly plausible that a number of Wendat men may have continued to engage in these activities without ever being discovered by state officials. Nevertheless, this case study demonstrates that by rendering certain behaviours and practices illegal, the Wendat were more likely to encounter the criminal justice system.

Chapter 2: Reinforcing Social, Moral, and Legal Regulation

By the turn of the twentieth century and continuing well into the first couple decades of the 1900s, the Canadian government enacted a series of laws as part of their 'nation building project'.[1] In an attempt to assert its sovereignty and maintain its authority, the state implemented different forms of social, moral, and legal regulation, which would allow them to extend their reach into people's everyday lives. By employing various tactics such as regulating common spaces, monitoring peoples' moral behaviours in the privacy of their own homes, and reinforcing Euro-Canadian principles, the federal government sought to extend its legislative reach to public and private spheres alike. To this end, the Canadian government operated alongside provincial political leaders to create a legal system with various regulatory agencies such as police services, courts of law, and penitentiaries that would work together by acting on behalf of the state to enforce the values of the nation. Thus, the legal system and its officials played a significant role in this project.[2] In other words, the state and its various actors worked together to assist each other in identifying, pursuing, and punishing perceived threats to law and order.

In theory, no one was immune to the effects of state expansion and state laws applied to everyone. However, a number of social historians, including Carolyn Strange and Tina Loo, demonstrate that social and moral regulation strategies were implemented with the goal of monitoring certain populations. For example, Strange and Loo maintain that "legal moral regulation was in many respects a project of imposing upon aboriginals, the poor, immigrants, children, and women standards of conduct idealized (but often flouted) by the principal

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[1] In this line of thinking, I am influenced by scholars such as Mariana Valverde and Ian McKay who have also examined this idea in their own works. For example, in *Age of Light, Soap, and Water (1991)*, Valverde explores the concept of nation building by deconstructing the role English Protestant organizations and individuals, such as clergymen, doctors, and educators played in the social purity movement. More specifically, the author examines how notions of race, gender, and class intersected during their campaign for moral reform in Post-Confederation Canada in their desire to create a country whose citizens would be of good moral and sexual character. Similarly, McKay's *Liberal Order Framework (2000)*, he questions the way historians write about Canadian history. In particular, he argues for a re-examination of 'Canada' as a project with two main goals: first, establish liberal rule over a vast territory, and second, create citizens who have internalized these ideological assumptions. That said, both authors have shaped my way of thinking of Canada as a nation building project put forward by a variety of actors.

[2] By legal system and its officials, I am not only referring to courtrooms and the individuals who work in those places such as judges, magistrates, crown prosecutors, and defence lawyers, to name a few. I am also including police forces, RCMP officers, jailhouses, wardens, prison guards, and Indian agents who were - and still are with the exception of Indian agents - part of a system where each sector works together to enforce state goals and regulate the population.

powerholders in early twentieth-century Canada: wealthy Anglo-Celtic Protestants, and, to a lesser extent, bourgeois French-Catholics."[3] In other words, the overall purpose of these strategies was to entice groups of individuals to blend into Canadian society by regulating their behaviour in public – and eventually private – spaces. While all of these groups experienced various level of surveillance, for Indigenous peoples, this type of state intervention was felt much differently. In fact, not only did social and moral regulation coincide with the federal government's assimilationist policies that sought to transform them into self-sufficient citizens, but it also operated within a framework that both identified and treated them as a separate legal category. As a result, the racialization that was embedded in the *Indian Act* (1876) worked to bring Indigenous peoples, such as the Wendat, into contact with the judicial system.

Organized thematically, this chapter is divided into two sections. Drawing from a total of nine cases, the first part examines the different social and moral regulation strategies implemented by the Canadian government in both public and private spheres, and their impact on the Wendat. In particular, this section explores how the *Indian Act*'s alcohol ban resulted in the criminalization of the Wendat for offences that were inextricably linked to their identity as Indigenous peoples. In the second section, I use seven court cases to analyze the different ways in which the *Indian Act* itself was used as a pretext to bring the Wendat into the criminal justice system, which resulted in an increased number of interactions between the Wendat and legal officials. Finally, this chapter concludes with a brief discussion on other types of disadvantages the Wendat faced when encountering the court system such as a language barrier, and its negative effects on the accused.

Monitoring Indigenous peoples' behaviours in public spaces was an important aspect of social and moral regulation. This is seen most clearly in *Genest v. Sioui (1923)*, which provides a relatively complete picture of how the accused's journey through the legal system unfolded. On April 6th, 1923, Alexandre Sioui, from Loretteville, appeared before the Honourable Judge Arthur Lachance after being accused of vagrancy.[4] According to the complainant, J. A. Genest, on or around March 30th 1923, Sioui " […] étant vagabond, [a] illégalement causé du trouble dans le chemin public, en blasphémant et en tenant une conduite tumultueuse, troublant par là, la

[3] Carolyn Strange and Tina Loo, *Making Good: Law and Moral Regulation in Canada, 1867-1939* (Toronto: University of Toronto Press, 1997), 9.
[4] *Genest v Sioui* (6 April 1923), Québec 233 (Québec Cour des Sessions de la Paix)

paix des habitants paisibles […]"[5] Judge Lachance accepted the complainant's statement, however, he did not issue a warrant for Sioui's arrest; instead, the accused was taken into custody by Constable Lamothe the same day.[6] With Sioui appearing before him, the presiding judge explained the charge to the accused and gave him the opportunity to share his side of the story by allowing him to state his reasons for why he should not be found guilty. When it was his turn to speak, however, Sioui did not elaborate any further and instead, he simply pled guilty to one count of vagrancy. After entering his plea, Judge Lachance ordered Sioui to pay a fine of $25 and to compensate Genest in the amount of $7.15.[7] But, if Sioui was unable to pay the total fine of $32.15, Judge Lachance stipulated that he would have to serve one month in jail at the local prison in Québec City.[8]

On the surface, this case seems to be fairly straightforward; a man appeared before the court after he was accused of vagrancy, the judge explained the charges to him, the offender pled guilty, and the judge ordered him to either pay a fine or spend one month in jail. The entire process was over within a day and it seemed as though justice had been served. In addition, the idea of a fair judicial system is bolstered by both the "accusation et plaidoyer" and the "condamnation" legal forms Judge Lachance filed out because these two pre-prepared, fill-in-the-blanks style documents give the impression that everything happened by the book.[9] As such, it appears to be an open and shut case with little to offer socio-legal historians interested in analyzing the legal treatment of Indigenous peoples. However, this case is not as simple as it seems, and by peeling back and analyzing each layer, it becomes clear that Sioui's conviction is part of a pattern in which state officials used the law to discipline Aboriginal peoples.

In an effort to monitor people's behavior and reinforce social, moral, and legal regulation in public spaces, state officials often employed vagrancy laws. The introduction of these laws "signified a move away from a moral economy of regulation to direct state intervention in the lives of the poor."[10] According to social historian Mary Anne Poutanen, "the broad interpretation of vagrancy and its relationship to ethnicity, class, and gender meant that a wide range of female

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[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] Mary Anne Poutanen, "Regulating Public Space in Early Nineteenth-Century Montreal: Vagrancy Laws and Gender in a Colonial Context," *Histoire Sociale/Social History* 35, no. 69 (2002): 36.

and male activities were construed as illicit and subject to state intervention".[11] Consequently, vagrancy laws applied differently to women and men. On the one hand, the state was preoccupied with regulating women's morality, especially when it involved their sexual behavior. On the other hand, the state viewed male vagrants as a moral threat because they refused to work and as a physical danger for their potential for aggression.[12] For Aboriginal peoples, the implementation of vagrancy laws took on a different meaning because they were employed alongside the state's goal of assimilation. The historic usage of vagrancy laws in Canada and its impact on First Nations has been studied by a number of historians. Brian Hubner, for example, explores how the Northwest Mounted Police (NWMP) used the law to restrict Aboriginal people's movements in order to prevent them from engaging in certain behaviors the government was trying to eradicate like cross-border horse stealing and cattle killing.[13] In particular, Hubner focuses on how vagrancy laws were used to enforce the pass system since the latter had no actual legal standing.[14] Thus, he concludes that "[…] vagrancy law was employed extensively to remove undesirable Indians from wherever the authorities did not want them."[15] In other words, Indigenous peoples were methodically removed from locations where their presence was not welcomed. Unfortunately, however, most of the existing scholarship focuses on the usage of vagrancy laws on First Nations in western Canada, and as such, little is known about how these legal measures were applied in the eastern part of the country.

Alexandre Sioui's interaction with Québec's justice system and the offence he was charged with supports Poutanen's and Hubner's arguments. More specifically, *Genest v. Sioui (1923)* sheds light on how the Canadian government sought to regulate public spaces based on Euro-Canadian codes of conduct. Simply put, these codes of conduct were founded on Western notions of patriarchy, liberalism, property, and law and order, and it was assumed that both men and women would take their rightful places in society in accordance with their gender. Over time, these values were enshrined in the 1892 Criminal Code (CC) following the consolidation of

[11] Ibid. 36.
[12] Ibid. 40-41.
[13] Brian Hubner, "Horse stealing and the borderline: the NWMP and the control of Indian movement, 1874-1900," in *The Mounted Police and Prairie Society, 1873-1919*, ed. William M. Baker (Regina: University of Regina, Canadian Plains Research Centre, 1998), 53.
[14] Ibid. 68.
[15] Ibid. 69.

existing laws. In particular, the CC outlined crimes against the state, public order, property, and persons while also laying out the repercussions for each offence.[16] Not only did this piece of legislation reflect the government's objectives to incorporate Western social norms into the legal fabric of Canadian society but it also gave the government the judicial authority to enforce these laws against people who did not conform to the law. To this end, the state frequently used legislation related to public order, such as vagrancy laws to regulate public spaces and monitor people's behavior. According to section 207 of the 1892 CC, for example, a vagrant was defined as a "loose, idle or disorderly person."[17] However, given that there were twelve ways a person could be identified as a vagrant[18], this law cast a net wide enough so that it could be used in conjunction with the discretion of police officers.

In addition, the application of these legal provisions was deeply rooted in the Canadian government's perceived role as a paternal figure for Indigenous peoples. That being said, state officials "saw their role as one of "elevating" the Indians […] to the "civilized standards" of the white man."[19] In other words, it was the responsibility of white men to improve the lives of Aboriginal peoples and lift them up from their primitive state by educating them in European ways of knowing. The racialization of First Nations coupled with this sentiment of benevolence is reflected in the way Sioui is described in the case file and the desire to correct behavior that

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[16] *Criminal Code*, S.C. 1892 (55-56 Vic.), c. 29, s 207, http://www.canadiana.ca/view/oocihm.9_02094/91?r=0&s=1
[17] Ibid.
[18] According to section 207 of the 1892 Criminal Code, there were twelve ways a person could be defined as a vagrant: "a) not having any visible means of maintaining himself lives without employment; b) being able to work and thereby or by other means to maintain himself and family willfully refuses or neglects to do so; c) openly exposes or exhibits in any street, road, highway or public place, any indecent exhibition; d) without a certificate signed, within six months, by a priest, clergyman or minister of the gospel, or two justices of the peace, residing in the municipality where the alms are being asked, that he or she is a deserving object of charity, wanders about and begs, or goes about from door to door, or places himself or herself in any street, highway, passage or public place to beg or receive alms; e) loiters on any street, road, highway or public place, and obstructs passengers by standing across the footpath, or by using insulting language, or in any other way; f) causes a disturbance in or near any street, road, highway or public space, by screaming, swearing or singing, or by being drunk, or by impeding or incommoding peaceable passengers; g) by discharging firearms, or by riotous or disorderly conduct in any street or highway, wantonly disturbs the peace and quiet of the inmates of any dwelling-house near such street or highway; h) tears down or defaces signs, breaks windows, or doors or door plates, or the walls of houses, roads or gardens, or destroys fences; i) being a common prostitute or night walker, wanders in the fields, public streets or highways, lanes or places of public meeting or gathering of people, and does not give a satisfactory account of herself; j) is a keeper or inmate of a disorderly house, bawdy-house or house of ill-fame, or house for the resort of prostitutes; k) is in the habit of frequenting such houses and does not give a satisfactory account of himself or herself; or l) having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming or crime, or by the avails of prostitution." For more information, see *Criminal Code*, S.C. 1892 (55-56 Vic.), c. 29, s 207. http://www.canadiana.ca/view/oocihm.9_02094/91?r=0&s=1
[19] Andrew Woolford, *Between Justice & Certainty: Treaty Making in British Columbia* (Vancouver: UBC Press, 2002), 40.

was deemed socially unacceptable. For example, according to the complainant, Sioui was illegally causing trouble in a public space by behaving in a blasphemous and tumultuous manner.[20] Although there are no specific details that reveal exactly what Sioui said or did, based on the characterization of his actions, his behavior likely against section 207 of the 1892 Criminal Code (CC), which defined a vagrant as someone who "causes a disturbance in or near any street, road, high-way or public place, by screaming, swearing or singing, or by being drunk, or impeding or incommoding peaceable passengers."[21] Evidently, the language used to define this offence was written in such a way to include a number of behaviors that could be interpreted as vagrancy. Consequently, Sioui's actions fell under the purview of this law and he went against what Canadian society considered socially acceptable behavior. Moreover, it is noteworthy to state that Sioui was described as disturbing the peace of law-abiding citizens.[22] This is significant because the wording implies that not only were his actions disruptive, but his presence was considered a public nuisance. Based on that, the state believed it was well within its rights to forcibly remove him. In addition, there was an assumption that it was the city's responsibility to uphold law and order. This point is reinforced by the letter that was signed by Genest and a witness, Emile Farladeau, and sworn by Loretteville Mayor Alfred Verret. In this document, Genest and Farladeau demand that the municipality of Loretteville arrest and punish Sioui "pour avoir causer *[sic]* le trouble dans le faubourg par les plus affreux blasphèmes […]"[23] While the letter did not explicitly state that the city was responsible for regulating public spaces, the wording suggests that Genest and Farladeau believed that the city did in fact have a role to play in maintaining the public order.

Moreover, the state blurred the lines between public and private spheres by enacting legislation that allowed them to make their presence felt in both domains. More often than not, moral regulation was at the heart of these laws because it was a way for the government to reinforce Western values. Social historians Carolyn Strange and Tina Loo explore this topic by examining the intimate relationship between law and morality in Post-Confederation Canada. In particular, the authors' argument is twofold. First, they maintain that during this critical phase of state formation, morality was used as a strategy to distinguish between good and bad

[20] *Genest v Sioui* (6 April 1923), Québec 233 (Québec Cour des Sessions de la Paix)
[21] *Criminal Code*, SC 1892, c. 29, s 207.
[22] *Genest v Sioui*
[23] Ibid.

behaviour.[24] At the heart of the government's vision was a nation founded on "capital accumulation" and the "heterosexual family comprising a male breadwinner and a wife dedicated to raising future productive Canadians."[25] Second, in order to ensure the success of this goal, the state used the law to back moral guidelines.[26] Therefore, by intertwining morality and the law, the latter essentially functioned "as a means of moral regulation."[27] *Gosselin v. Sioui (1937)* supports the argument put forward by Strange and Loo because it illustrates how the state used the law to extend its reach into public and private spaces in order to monitor the Wendat's moral behavior. In particular, this case highlights the intersection between morality and public and private regulation. After a complaint was lodged against Jules Sioui by an unknown individual, the Honorable Judge Hugues Fortier issued a warrant for his arrest on February 11th, 1937. Narcisse Gosselin, a member of Québec's provincial police force, arrested the accused, and, on the following day, he pled not guilty to one charge of "actes de grossière indécence."[28] The trial continued over the course of a couple weeks and on February 20th, Sioui was found guilty of gross indecency, and three days later, he was sentenced to four months and fifteen days of imprisonment.[29]

Similar to *Genest v. Sioui (1923)*, the case against Jules Sioui exemplifies how the state sought to correct behavior it deemed unacceptable. In both cases, a complaint was lodged against the two men and legal measures were taken in order to rectify the situation and dissuade them from engaging in that behavior again. By contrast, for Jules Sioui, the state was clearly looking at this case through a moral lens. This inference is supported by section 178 of the Criminal Code (CC), which stipulates that "every male person is guilty of an indictable offence and liable to five years' imprisonment and to be whipped who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person, of any act of gross indecency with another male person."[30] The sexual and moral connotations are deeply embedded in the wording of the law, which made it a criminal offence for men to engage in relations with each other, whether in public or in private. Thus, not only did this law support

[24] Strange and Loo, *Making* Good, 4.
[25] Ibid. 9.
[26] Ibid. 4.
[27] Ibid. 5.
[28] *Gosselin v Sioui* (11 February 1937), Québec 14073 (Québec Cour des Sessions de la Paix)
[29] Ibid.
[30] *Criminal Code*, S.C. 1892 (55-56 Vic.), c. 29, s 178, http://www.canadiana.ca/view/oocihm.9_02094/91?r=0&s=1

the idea that morality transcended the public and private spheres, but it also granted the state the authority to regulate what goes on in the privacy of someone's home. While we know for a fact that Alexandre Sioui was accused of causing a raucous and disturbing the peace in a public space, it is unknown whether or not Jules Sioui's actions took place in public or behind closed doors. If the latter is true though, it shows a significant break from the earlier case because the state was extending its reach into the private domain. Moreover, although Sioui's punishment falls well within the five-year maximum prison sentence mentioned in the law, the incomplete case file leaves a number of unanswered questions. For instance, it is not known why Jules Sioui was found guilty by Judge Fortier.[31] In fact, there is no information about what was said nor what type of evidence – if any – was presented at the trial. So, aside from knowing that Jules Sioui was represented by his lawyer Maître A. Jolicoeur, little else is known about how this case unfolded. Consequently, there is a lack of information, which could have helped to paint a clearer picture of what took place.

However, an article published in *Le Soleil* on Thursday February 18th, 1937 – the same day Jules Sioui's trial was scheduled to begin – may provide answers by filling in some of the gaps in the case file. In particular, this piece discloses important information that sheds light on the context this case emerged in. For example, before stating that "un individu de Loretteville a commencé à subir son procès ce matin devant M. le juge Hugues Fortier […]", the article begins by mentioning that "les accusations de grossière indécences continuent à pleuvoir en cour des sessions."[32] This statement is intriguing because it reveals that the crime Jules Sioui was charged with was part of a larger trend involving numerous incidents of gross indecency. Although the article does not specifically mention who these other individuals were, the language used to describe this phenomenon is clear: in the winter of 1937, the court was seeing a significant number of gross indecency cases. That being said, perhaps the prevalence of these crimes played a role in Sioui's sentencing. In fact, Judge Fortier's decision to sentence Sioui to four months and fifteen days of imprisonment was likely influenced by the state's desire to reinforce both social and moral regulation in an effort to uphold the Euro-Canadian value of heterosexual relationships. Thus, not only did the state use the law to deter others from engaging in behaviour

[31] *Gosselin v Sioui*
[32] "Pour Indécence," *Le Soleil*, February 18, 1937, p 17.

that was deemed socially and morally inappropriate, but it also used the legal system to legitimize state intervention into people's private lives.

Part of the state's ability to enforce social and moral regulation was made possible by the government's increasingly intrusive powers, which provided the government with an opportunity to reinforce moral regulation among Indigenous peoples on the reserve and inside their own homes. On August 20th, 1919, Madame Ludivine Dion laid two formal complaints against her husband, Narcisse Picard. According to the case file, in the first statement, she declared that "son époux, Narcisse Picard, étant un sauvage, a, sur la réserve des sauvages, à Indien Lorette, dans le District de Québec, depuis environ le 1er juin 1919, […] donné à des sauvages des substances enivrantes […]."[33] Based on Dion's statement, the Honourable Judge Philippe-Auguste Choquette, issued a warrant for Picard's arrest, accusing him of "donner de la boisson à des sauvages".[34] Following his arrest, Picard stood before the judge on August 21st, 1919 and was released pending his next court appearance on August 27th, 1919 at 10 am. In the meantime, Judge Choquette ordered Picard to follow certain conditions; namely, he was required to pay a fine of $100 and maintain "[…] la paix et soit de bonne conduite envers Notre Souverain Seigneur le Roi et tous et chacun de ses loyaux sujets, et plus particulièrement envers la dite Ludivine Dion […]."[35] The following day, Dion abandoned her first complaint but the second one continued.[36] According to that statement, Dion claimed that "Narcisse Picard, son mari, a sur la réserve des sauvages, à Indien Lorette […] en différents temps, depuis le 1er Juin 1919 […] été trouvé ivre, [et] aux mêmes temps et lieux, avoir eu, en sa possession, illégalement des substances enivrantes […]."[37] It is unknown whether or not another warrant was issued for his arrest based on Dion's second statement but, Picard did reappear before Judge Choquette on August 26th, 1919, and when asked to enter his plea, he pled guilty.[38] The judge sentenced him to either pay a $30 fine plus applicable fees or spend one month in jail; Picard paid $15 that same day and the balance was paid on October 20th.[39]

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[33] *Dion v Picard* (20 August 1919), Québec 2111 (Québec Cour des Sessions de la Paix)
[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] Ibid.

This court case bears a striking resemblance to *Gosselin v. Sioui (1937)* because it too illustrates how the government used the law to extend its reach beyond the public sphere and into the private domain by regulating Aboriginal peoples' behaviors. However, the case involving Narcisse Picard is one of the most interesting because unlike the other court cases in my study, the racialization is obvious. So, while the other cases require a lot more reading between the lines in order to analyze how it affected the legal system's treatment of Indigenous offenders, this one is immediately visible. More specifically, it is seen in the derogatory language that was used to describe both Picard and the Wendat reserve in the official case file. For example, at every stage of his interaction with the legal system, he was described as being a "sauvage de Indien Lorette."[40] This overt racialization illustrates how the law was not, in fact, blind to race. Rather, it was fully aware of this concept because it was deeply embedded in the justice system. Over the years, multiple scholars have analyzed the intersection between race and the law in Canadian history. In particular, legal historian Constance Backhouse analyzes race as a fluid social construct that affected the treatment of racialized minorities before the law. Basing her argument on six court cases, she argues that race was used to justify Euro-Canadian domination over others.[41] The *Dion v. Picard* (1919) court case supports Backhouse's argument because it shows how the conceptualization of race was deeply embedded in all levels of the justice system and manifested itself through Picard's unequal treatment before the law. Thus, the racialization written in law was reinforced by judges in the courtroom.

However, this type of racialization was not unique to First Nations. As shown by Backhouse and other scholars, other minorities were also racialized by the court system. Social historian Barrington Walker, for instance, examines how the interaction between Blacks and the Canadian justice system in nineteenth century Ontario produced and reproduced race. More specifically, he argues that, "when Blacks appeared before the criminal courts, 'race,' whether tacitly or overtly, procedurally or rhetorically, was on trial."[42] In other words, a defendant's race, as well as his or her behaviour, was subject to scrutiny when Black Canadians encountered the justice system. As I went through the archives, I came across a case that supports the arguments

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[40] Ibid.
[41] Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: University of Toronto Press, 1999), 6.
[42] Barrington Walker, *Race on Trial: Black Defendants in Ontario's Criminal Courts, 1858-1958* (Toronto: University of Toronto Press, 2010), 20.

made by both Backhouse and Walker. In fact, *Paquet v. Sasso (1926)* demonstrates that race as a social and legal construct was incorporated within the court system and used as an identifying marker. On February 24th, 1926, Arthur Paquet, a constable from the municipal police force of Québec, accused a Black man of vagrancy. In his written statement, he declared that a "nègre", whose name was currently unknown but who resided at 336 rue St Luc, was capable of working and providing for himself but voluntarily chooses not to.[43] That same day, the Honorable Judge Philippe-Auguste Choquette issued a warrant for the man's arrest, and between then and March 4th 1926, the Black man who was eventually identified as Robert Sasso appeared before the Honourable Judge Arthur Lachance. According to the case file, three witnesses, Constables Arthur Paquet and Narcisse Auclair and Deputy Chief Bigaouette, testified against Sasso and on April 5th, the judge dismissed the charge and Sasso was released.[44] Similar to the case against Narcisse Picard, the discriminatory language in this case was used to identify and categorize the accused. In fact, Picard and Sasso were othered in two ways: not only were they seen as other because they were alleged deviants who disobeyed the law, but they were also viewed as racialized others. Inhabiting this dual identity of a racialized suspect, both men were treated differently by the legal system. Thus, both cases openly reveal how race was deeply intertwined in the justice system.

Although the explicit racialization in *Dion v. Picard* (1919) makes this case stand out from the rest, this case is similar to the others because Picard's racialized treatment also appears in more subtle ways. More specifically, this case – and several others like it – exemplify how alcohol restrictions that targeted Indigenous people went beyond simply intruding into their private lives. Instead, it served as a way to racialize First Nations. This is apparent in the dehumanizing language that was used to describe Picard and the reserve, and by the fact that both crimes he was charged with explicitly singled out Indigenous peoples. Earlier laws regulating Aboriginal peoples' alcohol consumption were established during the seventeenth century at the height of the fur trade and in the lead up to Confederation before being amalgamated under the *Indian Act* (1876), and later revised in the 1906 amendments. In Picard's case, his wife's second complaint, which accused him of possessing alcohol, most likely went against section 137, which stipulated that:

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[43] *Paquet v Sasso* (24 February 1926), Québec 138 (Québec Cour des Sessions de la Paix)
[44] Ibid.

> Every Indian or non-treaty Indian who makes or manufacturers any intoxicant, or who has in in possession, or concealed, or who sells, exchanges with, barters, supplies or gives to any other Indian or non-treaty Indian, any intoxicant shall, on summary conviction […] be liable to imprisonment for a term not exceeding six months and not less than one month, with or without hard labour […][45]

Evidently, this part on intoxicants racialized First Nations because it applied only to Indigenous people as defined by the state, thereby labelling and categorizing them as a separate group. Indeed, this act did not exist for any other group of people but was crafted with the goal of regulating and assimilating First Nations under the guise that, as wards of the state, they were incapable of managing their own affairs. Consequently, this resulted in their unfair treatment before the law. In *Dion v. Picard*, this is seen most clearly in the consistent use of the term "sauvage" to describe the accused and the Wendat Reserve.[46] This overt racialization contradicts the idea of the judicial system as being unbiased, fair, and colour-blind. Therefore, while the language in itself was used to racialize Indigenous people, it was also a product of the racialization that was already deeply embedded in the justice system through the enactment of the *Indian Act* and subsequent amendments and regulatory measures.

Over the years, a number of historians have made significant contributions to the study of alcohol regulation in Canada and its impact on those who fell under its purview. Historian Mariana Valverde, for instance, examines how alcohol regulation was tied to the notion of self-control and the idea that state intervention was needed for those, it assumed, did not have the capacity to regulate their own alcohol consumption.[47] Not surprisingly, the concept of self-control – and the presumed absence of it – was deeply intertwined with race. Given that Aboriginal peoples were considered to be part of the "problem subpopulations", the government took a keen interest in regulating their alcohol consumption.[48] Thus, Valverde argues that "liquor laws governed racial status as much as, and perhaps more effectively than, they governed drinking".[49] In other words, the goal of alcohol restrictions in Canada was twofold: not only did they allow the government to regulate alcohol consumption, but they also allowed it to use these

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[45] *Indian Act*, R.S.C. 1906, c 81, s 137, https://heinonline-org.lib-ezproxy.concordia.ca/HOL/Page?handle=hein.castatutes/rcanpun0002&id=557&collection=castatutes&index=
[46] *Dion v Picard*
[47] Mariana Valverde, *Diseases of the Will: Alcohol and the Dilemmas of Freedom* (Cambridge: Cambridge University Press, 1998), 162.
[48] Ibid. 162.
[49] Ibid. 164.

regulations to create distinctions along racial lines between those who were permitted to consume alcohol and those who were not. In turn, this racialized Indigenous peoples as 'other' before the law.

Expanding on Valverde's research, historian Robert Campbell examines the history of alcohol regulation vis-à-vis Aboriginal peoples. In particular, he argues that the *Indian Act*'s 1876 alcohol ban further racialized First Nations because these laws created a link between citizenship and the ability to possess and consume alcohol. [50] For example, "one of the citizenship rights denied to Indians was the right to possess and consume alcohol, and enfranchisement was linked to sobriety."[51] In turn, this established two groups of people: citizens and non-citizens. As mentioned by Valverde, this resulted in the creation of a strict racial binary between "Indians" and "non-Indians" based on people's capacity to access alcohol.[52] Moreover, Campbell points out that the *Indian Act* was clear; the only way to get around the alcohol ban was through enfranchisement.[53] According to section 86, "Indians", as defined by the act, must possess "integrity, morality and sobriety" to be considered eligible for enfranchisement.[54] By making alcohol one aspect of citizenship rights, Indigenous peoples were forced to either keep their Indian status and continue to be denied the same rights as everyone else or give up their status and be granted equality. My case study on the Wendat is an extension of both Valverde's and Campbell's research because it expands on the idea that "liquor laws helped to define and regulate Aboriginal peoples."[55] With this in mind, I demonstrate how the *Indian Act*'s alcohol ban and the Criminal Code racialized the Wendat while also denying them the same rights as "non-Indians".

Charles Sioui's numerous interactions with Québec's judicial system provides valuable insight on the relationship between the Wendat's racialized treatment and the prosecution of alcohol related crimes. Based on my research, Sioui's first interaction with Canadian criminal law occurred on January 20th, 1925 after Wilfred Turgeon filled a complaint against him

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[50] Robert A. Campbell, "Making Sober Citizens: The Legacy of Indigenous Alcohol Regulation in Canada, 1777-1985," *Journal of Canadian Studies* 42, no. 1 (2008): 108.
[51] Ibid., 117.
[52] Valverde, *Diseases of the* Will, 162.
[53] Ibid. 108.
[54] *Indian Act, 1876*, S.C. 1876, c 18, s 86, https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/1876c18_1100100010253_eng.pdf
[55] Campbell, "Making Sober Citizens," 118.

accusing him of being "[en] possession illégale d'alambic".[56] According to the *plumitif*, Sioui briefly appeared in front of an unnamed judge later that day before he was granted a conditional release on a promise to appear in court.[57] On February 18th, Sioui abstained from entering a plea, however, for reasons that are not made clear in the *plumitif*, he was immediately convicted and sentenced to either pay a $200 fine plus applicable fees or spend six months in the local jail.[58] By April 16th, Sioui paid the fine for a total of $223.15, and the matter was settled.[59] Although a significant amount of detail is missing, the offence Sioui was charged with provides an important analytical starting point. As mentioned in the *plumitif*, Sioui was charged with illegally possessing an alembic, a still used to distill alcohol.[60] By this time, however, alcohol production was strictly regulated by the provincial government's liquor commission, La Commission des Liqueurs du Québec.[61] As a result, because Sioui was in possession of a device used to manufacture alcohol without proper authorization from of the state, his actions were deemed illegal. Along with examining the offence, it is equally important to analyze how this case may have unfolded during Sioui's trial. For example, even though there is no information in the court docket on what type of evidence was presented against the accused, it is possible that the alembic was used as physical proof of his transgressions. If this line of thinking is correct, it may also explain why Sioui was convicted and sentenced on the first day of his trial.

A little over two years later, Sioui, once again, found himself in a Québec courtroom. On August 17th, 1928, La Commission des Liqueurs du Québec acted as the plaintiff for a case after a formal complaint was filed against Sioui accusing him of "contrevenir la Loi Liqueurs Alcooliques".[62] According to the *plumitif*, Sioui appeared before Judge Arthur Lachance that same day and was sentenced to either pay a $1,000 fine or spend one month in jail after pleading guilty.[63] Unlike his previous encounter with the system, Sioui did not pay the fine and a warrant for his imprisonment was issued, and Sioui was taken to the local jail to serve out his sentence.[64] Similar to his first interaction with the legal system, this case is also incomplete. For instance, it

[56] *Turgeon v Sioui* (20 January 1925), Québec 36 (Québec Cour des Sessions de la Paix)
[57] Ibid.
[58] Ibid.
[59] Ibid.
[60] Ibid.
[61] Strange and Loo, *Making Good*, 91.
[62] *Commission des Liqueurs du* Québec *v Sioui* (17 August 1928), Québec 261 (Québec Cour des Sessions de la Paix)
[63] Ibid.
[64] Ibid.

is not known who from the liquor commission filed the complaint and the details from the deposition are also not included. Furthermore, no explanation was given on why Sioui chose to plead guilty nor is there any mention of the specific clause in the liquor act he was accused of contravening.

Regardless, this case symbolizes the state's increasing intervention into the lives of the Wendat with the creation of La Commission des Liqueurs du Québec, and the repercussions of this intrusion. Founded in 1921, the purpose of Québec's liquor commission– and others more broadly – was twofold. On the one hand, it provided a certain degree of control over morality by tolerating alcohol consumption under certain circumstances that were outlined by the state.[65] On the other hand, it also generated a new source of revenue for the government by fining individuals who contravened it.[66] Although these new guidelines applied to everyone, for Indigenous peoples, liquor boards were used as a colonial tool to regulate their alcohol consumption.[67] In other words, by acting on behalf of the state, la Commission des Liqueurs du Québec reinforced government laws, in turn allowing the state to bolster their political authority over First Nations and reassert their sovereignty. Given that it operated as an extension of state power, going against the liquor commission was viewed as a direct threat to law and order because it disregarded the government's jurisdiction and its ability to create regulations, thus questioning its legitimacy. In *La Commission des Liqueurs du Québec v. Sioui* (1928), the meaning behind his actions was reflected in his punishment. For example, the choice he was given between paying a large fine or spending time in prison illustrates the severity of this crime.[68] While I recognize that Sioui's status as a repeat offender may have contributed to the harsh punishment he received, it does not take away from the fact that this case reflects the

[65] Strange and Loo, *Making Good*, 91.
[66] Ibid. 91.
[67] Craig Heron explores the notion of regulation by situating this topic within the politics surrounding twentieth century alcohol sales. At the heart of these political initiatives was the need to establish a set of rules that determined "where alcohol could be purchased and by whom, when and where it could be consumed and how drinkers should comport themselves while drinking." (10) Fuelling these types of measures was the idea that alcohol was an important marker of racial identity; especially for Euro-Canadians who used it to distinguish themselves from other socio-economic classes and to bolster their presumed racial superiority over people of colour. Consequently, individuals who drank excessively or were unable to control their behaviour while intoxicated were seen as social and moral problems. For Indigenous peoples, more specifically, Heron maintains that the image of Aboriginal drunkenness was used to justify the creation of an alcohol ban and implement legal regulation to curtail their uncontrolled drinking. For more information see: Craig Heron, *Booze: A Distilled History* (Toronto: Between the Lines, 2003).
[68] *Commission des Liqueurs du Québec v Sioui*

government's attempt to use alcohol regulation as a pretext to bring Indigenous peoples' into the criminal justice system. Moreover, this large fine coupled with the possibility of prison time echoes the government's desire to deter people from committing alcohol-related infractions. Even though this particular case, unlike the others, does not contain the language that explicitly ties it to moral regulation, it is, nevertheless, part of a broader pattern in which liquor laws were used to racialize First Nations as other.[69]

After serving his one-month prison sentence in a local jail, Sioui was released sometime in September 1928. Shortly thereafter, he reappeared in front of an unknown judge on October 23rd after Canadian border agent, Léon Hardy accused him of illegally importing alcohol.[70] According to the records, Sioui appeared before a judge, one week later on October 30th.[71] That same day, Sioui abstained from entering a plea and the case was adjourned.[72] Over the next two weeks, the case was postponed for a second time on November 7th and rescheduled for November 15th, but after abstaining for a third time, the case was dismissed and all charges were dropped.[73] However, as this case made its way through the court system, Hardy laid another complaint against Sioui on November 14th, 1928, a day before his second trial ended. While the document explaining the details of his statement are missing, Hardy accused Sioui of illegally possessing a still.[74] Sioui stood in front of a judge the same day before the case was rescheduled and he was given a conditional release pending the start of his trial.[75] He reappeared in a Québec City courtroom on November 22nd, 1928, but abstained from entering a plea and the case was adjourned.[76] After reconvening and adjourning for a second time five days later, the judge finally rendered a decision on November 29th; Sioui was found guilty and sentenced to pay a fine of $200 or serve six months in the local jail.[77] However, it took over a year for a warrant to be executed, and on February 2nd, 1930, Sioui was arrested and brought to the local jail to serve his sentence.[78]

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[69] To consult two other cases that support this pattern, see *Commission des Liqueurs du Québec v Bastien* (15 August 1930), Québec 4102 (Que CSP) and *Commission des Liqueurs du Québec* v Bastien (27 May 1931), Québec 5302 (Que CSP).
[70] *Hardy v Sioui* (23 October 1928), Québec 1076 (Québec Cour des Sessions de la Paix)
[71] Ibid.
[72] Ibid.
[73] Ibid.
[74] *Hardy v Sioui* (14 November 1928), Québec 1227 (Québec Cour des Sessions de la Paix)
[75] Ibid.
[76] Ibid.
[77] Ibid.
[78] Ibid.

Even though these two cases seem simple and straightforward, they shed light on the role every branch of the state had in enforcing alcohol regulation and protecting state interests. Even though specific details such as Hardy's original statements in both cases are missing, the facts provide historians with a clear indication of what could have happened. For instance, since the complaints were laid within weeks of each other and Hardy is identified as the plaintiff and a border agent in both case files, it can be assumed that the two complaints are part of the same incident that took place in the fall of 1928 when Sioui was apprehended along the Canada-US border in the Province of Québec.[79] The crimes Sioui was charged with support this theory. In the first instance, Sioui was charged with "boisson illégale importée", so, even without the original statement, this charge is self-explanatory.[80] If this line of reasoning stands, it could also be assumed that Hardy came across the still during the same search that revealed the alcohol, thereby explaining the second complaint brought against him.[81] However, it is unclear why these two charges were not filed together. One possible explanation is that Hardy assumed the chances of conviction would be higher if each offence was brought before the court separately. Given the outcome of both cases, this legal strategy was successful, if that was the intention. Another possible reason for filing two separate complaints was to extend Sioui's criminal record. This tactic worked in Hardy's favour because it ensured Sioui's status as a repeat offender, thereby affecting all of his future potential encounters with the court system. Thus, not only would Sioui be racialized as "Indian", but now he would also be labelled as a recidivist.

Similar to his previous interaction with the court system in the summer of 1928, Sioui's two final encounters with the judicial system later that same year involved state actors who operated as extensions of the government. For instance, like the member of Québec's liquor commission who denounced Sioui's actions in August 1928, Canadian border agent, Léon Hardy was also acting as an arm of the state when he filed two back-to-back complaints against Sioui in October and November.[82] Thus, the two cases are clear examples of a state actor who was working on behalf of the government to enforce state rules. In turn, Hardy's actions legitimized the state and its ability to create legislation and impose its authority. Although it is unknown

[79] *Hardy v Sioui* (23 October 1928), Québec 1076 (Québec Cour des Sessions de la Paix) and *Hardy v Sioui* (14 November 1928), Québec 1227 (Québec Cour des Sessions de la Paix)
[80] *Hardy v Sioui* (23 October 1928)
[81] *Hardy v Sioui* (14 November 1928)
[82] *Hardy v Sioui* (23 October 1928), Québec 1076 (Québec Cour des Sessions de la Paix) and *Hardy v Sioui* (14 November 1928), Québec 1227 (Québec Cour des Sessions de la Paix)

whether Hardy had personal motivations in bringing forward his complaints, these two instances are part of the pattern of racialization members of the Wendat community experienced throughout the 1920s and 30s. Moreover, for Aboriginal peoples, more broadly, enforcing alcohol related laws was part of Canada's policy that sought to erode First Nations' sovereignty, regulate Indigenous peoples, and, eventually, assimilate them into Canadian society. So, even if Sioui's racialization is not apparent through language, like in other cases, for example, it still occurred within a legal and political framework that aimed to assimilate him and all Indigenous peoples.

Four years later, another case involving Québec's liquor commission demonstrates how alcohol regulation and state power continued to be deeply intertwined. On November 2nd, 1932, Moïse Groslouis from "Village Huron, Loretteville" was accused of illegally selling alcohol.[83] That same day, the Honourable Judge Arthur Fitzpatrick issued a warrant for Groslouis' arrest and the accused was apprehended the next day by constables Couillard and Laforest[84]; Groslouis appeared before Judge Fitzpatrick on November 3rd, 1932 and when asked to enter his plea, Groslouis pled not guilty.[85] According to the court docket, the crown presented their evidence to the judge and the proceedings were adjourned.[86] In the meantime, however, Groslouis was granted a conditional release on a promise to appear in court.[87] After the case was adjourned for a second time on November 9th, all parties reconvened a week later and Groslouis was found guilty of illegally selling alcohol and Judge Fitzpatrick sentenced him to either serve one month in jail plus pay a $320 fine or spend three months in prison.[88] Groslouis chose the former, and that same day, an order for his imprisonment was issued and he was taken to the local jail.[89]

Similar to Charles Sioui's encounter with the legal system four years prior, this case is another example of state expansion and increasing government intrusion into the private lives of the Wendat. Yet, unlike *Commission des Liqueurs du* Québec *v. Sioui (1928)*, Groslouis' punishment included a mandatory prison sentence regardless of which of the two sentencing

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[83] *Commission des Liqueurs du* Québec *v Groslouis* (2 November 1932), Québec 7989 (Que CSP).
[84] "Guerre à la contrebande dans le Québec: Les Officiers des Douanes et de l'Accise lancent une campagne contre la contrebande de cigarettes – On recherche deux accusés – Arrestation par les agents de la commission des liqueurs," *Le Soleil*, Novembre 3, 1932, p 1.
[85] *Commission des Liqueurs du* Québec *v Groslouis*
[86] Ibid.
[87] Ibid.
[88] Ibid.
[89] Ibid.

options he chose.[90] Unfortunately, the *plumitif* does not explain why such a harsh punishment was given to Groslouis. However, an article published in *Le Soleil* on Thursday November 3rd, 1932 – the day after Groslouis was accused of illegally selling alcohol – may provide some answers by shedding light on the context of the case. According to this piece, Groslouis' arrest was not a random occurrence. Rather, it was part of a state campaign against contraband undertaken by the Département des Douanes et de l'Accise; approaching this task under the assumption that the trafficking of illegal goods was rampant in Québec City, this government institution, in cooperation with local law enforcement, sought to quickly and efficiently dismantle these prohibited operations.[91] Among those who were arrested included alleged cigarette importers such as Lomer Jacques, who was accused of being in possession of 13,000 illegal cigarettes with intent to sell and purported alcohol traffickers like Groslouis.[92] That being said, on the one hand, it can be assumed that crimes that ignored the government's authority were punished more severely. Thus, to a certain extent, Groslouis' sentencing reflects the state's desire to deter others from engaging in behaviours that flouted state authority. On the other hand, the harsh punishment Groslouis received could also have been in response to the argument his lawyer made at trial. Based on the article in *Le Soleil*, the author stated that "la Défense, dans cette affaire va soulever un point de droit autour duquel le débat ne manquera pas d'intérêt, savoir que les officiers provinciaux n'ont pas le droit d'opérer en territoire de la réserve huronne."[93] Given the argument Groslouis was making – and the potential repercussions should it be accepted in court – it is certainly possible that Judge Fitzpatrick's decision to find him guilty and imprison him was done to reinforce the idea that the Wendat were subject to both federal and provincial laws. This inference is supported by the case of Lomer Jacques. For example, although Jacques was arrested and tried as part of the same ongoing campaign against contraband, Judge Fitzpatrick sentenced him to pay a $50 fine plus applicable fees or to serve one month in jail should he not be able to afford the fine.[94] Therefore, even though both men were charged with and convicted of different crimes, Groslouis' identity as a Wendat man who

[90] Ibid.
[91] "Guerre à la contrebande dans le Québec: Les Officiers des Douanes et de l'Accise lancent une campagne contre la contrebande de cigarettes – On recherche deux accusés – Arrestation par les agents de la commission des liqueurs," *Le Soleil*, Novembre 3, 1932, p 1.
[92] Ibid. 1.
[93] Ibid. 1.
[94] "Activités nombreuses à la Cour: Le propriétaire d'un hangar où l'on avait saisi 13,000 cigarette de contrebande est condamne à l'amende – jeune fille accusée de vol – La cause de St-Pierre," *Le Soleil*, Décembre 21, 1932, p 1.

sought to reaffirm the reserve's self-determination affected the way he was treated before the law.

In 1937, Moïse Groslouis once again found himself in a Québec City courtroom. On February 9th, 1937, based on the suspicion that Groslouis was illegally keeping alcohol in his home, a warrant was issued to search his residence located in the "Village Huron de Lorette".[95] J. Ouimet, a member of the Royal Canadian Mounted Police (RCMP), executed the warrant that same day and, according to the court docket, alcohol was found in Groslouis' home. As a result, he was arrested and he later appeared before the Honourable Judge Hugues Fortier.[96] When asked by the judge to enter his plea, Groslouis pled guilty to one count of "garder en sa possession liqueur dans l'habitation d'un Indien".[97] Judge Fortier ordered him to either pay a $50 fine plus applicable fees or spend one month in jail. Unable to pay the fine, Groslouis was imprisoned the same day.[98] This case is interesting because it reinforces my argument that the *Indian Act*'s alcohol ban racialized the Wendat. This is seen most clearly when examining the offence Groslouis was charged with. For instance, the *plumitif* states that Groslouis was convicted of illegally keeping alcohol in his home.[99] Based on the wording of the offence, his actions likely went against section 137 of the *Indian Act* (1906), which made it illegal for "every Indian or non-treaty Indian" to possess any kind of intoxicant.[100] By explicitly targeting Indigenous people, the law reinforced the notion that two separate categories of people existed: "Indians" and "non-Indians". Therefore, even though there is no overt racialized language in this case like the one used against Narcisse Picard and the Wendat reserve in 1919, Groslouis' inequitable treatment of was visible in the type of crime he was accused of committing.

Evidently, even though the *Indian Act*'s alcohol ban was not part of the Criminal Code (CC), it worked alongside the CC and the province's liquor commission to bring the Wendat into the justice system for alcohol related infractions. Legal historian Shelly Gavigan presents a similar analysis on the usage of the *Indian Act* in which she criticizes the current discourse on criminalization for being too narrow and pushes for a more precise definition that distinguishes

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[95] *Ouimet v. Groslouis* (9 February 1937), Québec 14057 (Québec Cour des Sessions de la Paix)
[96] Ibid.
[97] Ibid.
[98] Ibid.
[99] Ibid.
[100] *Indian Act*, R.S.C. 1906, c 81, s 137.

between various forms of law.[101] She concludes that while the *Indian Act* did not criminalize First Nations; it "Indianized" them for not letting go of the behaviors the government was trying to eliminate.[102] Though Gavigan focuses specifically on the interactions between First Nations on the prairies, my findings demonstrate that, in Québec, the *Indian Act* functioned in a similar way. In particular, it operated as a pretext to bring the Wendat into the justice system – not only for alcohol related infractions but for all other offences punishable under the Indian Act. According to the research I conducted, between 1935 and 1939, seven cases involved defendants who were explicitly charged for contravening at least one section of the *Indian Act*. Out of these seven, there were six men and one woman. Four of the men were Wendat; three were from the reserve and one lived in the city of Loretteville. It is impossible to know if the two other men were Indigenous, but we do know that one was from Joliette and the other resided in Loretteville, and the only woman was from the Wendat Reserve. Moreover, five of the seven cases were brought to the court by members of the Royal Canadian Mounted Police (RCMP), and the two remaining cases listed a resident from the Village des Hurons as the plaintiff. Finally, five of the seven defendants were convicted and sentenced to either pay a fine plus applicable fees or be imprisoned if they were unable to do so. The significance of these cases is twofold. First, they support Gavigan's argument in which she maintains that the *Indian Act* "Indianized" Aboriginal peoples on the Plains for holding onto behaviors the Canadian government sought to eradicate.[103] In addition, they demonstrate that her analysis can be applied to both a different geographical location and time period. Second, and perhaps most importantly, these cases expand on her research by illustrating how the *Indian Act* went beyond racializing Indigenous peoples. Instead, it was also used a pretext to bring the Wendat into the judicial system. Thus, by employing this act as a colonial tool, state officials increased the chances of Wendat men and women being brought into the court system.

Dame Zéphilda Laliberté's first encounter with Canadian criminal law occurred on December 12th, 1935 after local RCMP officer Maurice Laberge accused her of "contravev[enir] à la Loi des Indiens".[104] Though not a lot of information about her is given in the *plumitif*, we do

[101] Shelly Gavigan, *Hunger, Horses, and Government Men: Criminal Law on the Aboriginal Plains, 1870-1905* (Vancouver: UBC Press, 2012), 19.
[102] Ibid. 22.
[103] Ibid. 22.
[104] *Laberge v Laliberté* (12 December 1935), Québec 12516 (Québec Cour des Sessions de la Paix)

know that she was a widow from "Lorette (Réserve Indienne)" and she was represented at trial by her lawyer, Maître Ed Leclerc.[105] After Officer Laberge filed a formal complaint against her, Laliberté appeared before the Honourable Judge Laetare Roy two days later, and when asked to enter a plea, she pled not guilty.[106] According to the *plumitif*, evidence was entered that same day, however, there is no clear indication about what type of proof was provided, and the case was adjourned until December 19th.[107] Laliberté's judicial process continued over the course of the next two weeks and on January 7th, she changed her plea from not guilty to guilty, and the Honourable Judge Arthur Fitzpatrick sentenced her to either pay a $50 fine plus applicable fees, or spend fifteen days in jail.[108] That same day, Laliberté paid a $20 deposit and she was given until January 22nd to pay the remaining balance, however, she received three extensions to pay the rest of the amount she owed, and finally, on February 8th, she paid her outstanding balance for a total of $61.25.[109]

Even with some gaps in the records, this case is important because of what it can tell us about Laliberté's interaction with the justice system. On the one hand, it demonstrates that, like the other cases that include a Wendat offender charged under the *Indian Act*, her racialization is not immediately visible such as through language like it was in *Dion v. Picard (1919)*. Instead, it was embedded in the judicial system through law and enforced with the help of state actors. This is seen most clearly when looking at the offence she was charged with. According to the *plumitif*, Laliberté was accused of contravening the *Indian Act*.[110] Although the specific section she violated is not mentioned in the court docket, her case reflects the different ways in which this act was used as a pretext to bring Aboriginal peoples into contact with the criminal justice system. On the other hand, this case also sheds light on how Laliberté's process unfolded. First, while specific information about the type of evidence that was presented against her is missing, the breakdown of the fine offer potential clues. For instance, according to the *plumitif*, 3.00 of her fee was given to an unspecified number of "témoins".[111] Therefore, at least two witnesses either to the incident in question or her character were called to testify during Laliberté's trial

[105] Ibid.
[106] Ibid.
[107] Ibid.
[108] Ibid.
[109] Ibid.
[110] Ibid.
[111] Ibid.

and as such, she had to reimburse them for their time. If this inference is correct, it opens up another set of questions such as who these individuals were, what did they say in their testimony, and what were their motives. Unfortunately, I was unable to find the answers to those questions, however, that does not take away from the importance of this case and the role these witnesses may have played in Laliberté's conviction. Furthermore, the presence of witnesses could explain why the trial lasted over three months; given that each individual had to provide a statement, this would have surely extended the entire process. Another important aspect of this case that needs be analyzed is the change in Laliberté's plea. At the start of the trial, Laliberté pled not guilty, however, a little less than one month later, she changed her plea to guilty.[112] The *plumitif* does not include a reason for this sudden change but there are a couple reasons that could explain this. First, it is possible that, on the advice of her counsel, Laliberté chose to plead guilty because he believed that changing her plea would make the judge more lenient during sentencing. Or, perhaps a deal was negotiated between herself and the crown prosecutor for a reduced sentence, if she pled guilty.

A similar incident took place on July 23rd, 1936 when another member of the state, RCMP officer Corporal M.P. Delaney, filed two separate complains against René Bilodeau and Elzéar Sioui, accusing them of "contrav[enir] Loi des Indiens".[113] Based on the fact that Officer Delaney is listed as the plaintiff in both cases and they occurred on the same day, it can be assumed that Bilodeau and Sioui were part of the same incident. According to the *plumitif*, Bilodeau, a resident of Loretteville, appeared before the Honourable Judge Arthur Fitzpatrick on July 28th and when asked to enter his plea, he pled not guilty in the presence of his lawyer, Paul Drouin.[114] That same day, the crown prosecutor, Maître Paul Roy, presented his evidence to the judge and Bilodeau's defence lawyer, and the case was adjourned and set to take place on August 4th.[115] When the trial resumed, Roy explained his evidence to the court and Bilodeau abstained from testifying in his defence.[116] This went on for another week until Bilodeau, accompanied by his lawyer, changed his plea to guilty on August 19th.[117] Following his admission of guilt, the presiding judge, the Honourable Laetare Roy, sentenced Bilodeau to

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[112] Ibid.
[113] *Delaney v Bilodeau* (23 July 1936), Québec 13317 (Québec Cour des Sessions de la Paix)
[114] Ibid.
[115] Ibid.
[116] Ibid.
[117] Ibid.

either pay a $50 fine plus applicable fees or spend one month in jail.[118] On the day he was convicted, Bilodeau paid a portion of his fine and after receiving an extension, the entire balance of $67.80 was paid by September 2nd.[119]

After being accused of contravening the *Indian Act*, Elzéar Sioui, from the "Réserve Indienne of Loretteville", appeared before Judge Arthur Fitzpatrick on July 28th, 1936. Standing there with his lawyer, Maître J-P. Galipeault, by his side, Sioui pled not guilty when asked by the judge to enter his plea.[120] That same day, evidence of an unspecified nature was presented by the crown prosecutor, Paul Roy, and the trial was adjourned and rescheduled for August 4th.[121] According to the *plumitif*, the trial continued with all parties present, and at the end of the session, Judge Fitzpatrick stated that he would deliver his verdict one week later.[122] On August 11th, the judge found the defendant guilty and sentenced him to either pay a $25 fine plus applicable fees or spend nine days in jail.[123] By August 27th, an arrest warrant was issued and Sioui was taken to the local jail to serve out his sentence.[124]

The experiences of Bilodeau and Sioui reinforce the fact that the *Indian Act* increased a person's chance of encountering the judicial system. As a result, individuals who engaged in behaviours that were not prohibited by the Criminal Code (CC) but were outlawed under the *Indian Act*, were now brought into the courtroom and prosecuted. In other words, both the *Indian Act* and the CC could be used to target individuals whose behaviours were illegal under one type of law but not the other. However, what differentiates these two cases from *Laberge v. Laliberté (1935)*, are the intentions behind the *Indian Act*'s application, which depended on whether or not the offender was Indigenous. For example, in Bilodeau's case, given that the *plumitif* does not mention any affiliation to a specific Aboriginal community, it can be assumed that he was not Indigenous. As a result, Corporal Delaney could have decided to charge Bilodeau under the *Indian Act* for two reasons. First, Bilodeau's behavior was not illegal under the CC, and therefore, he needed to be prosecuted under the *Indian Act*. Second, and perhaps most importantly, he viewed Bilodeau's actions as working against government efforts to regulate

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[118] Ibid.
[119] Ibid.
[120] *Delaney v Sioui* (23 July 1936), Québec 13318 (Québec Cour des Sessions de la Paix)
[121] Ibid.
[122] Ibid.
[123] Ibid.
[124] Ibid.

Indigenous peoples. In other words, since Indigenous peoples were considered wards of the state due to their perceived inability to manage their own affairs, anyone whose behaviors could potentially corrupt them and delay their assimilation was penalized. If this line of inquiry is correct, it may also explain why Bilodeau was given a harsher sentence. For instance, while Sioui had the choice between paying $25 fine plus applicable fees or spending nine days in jail, Bilodeau was sentenced to either pay a $50 fine plus applicable fees or spend one month in jail.[125] However, it is interesting to note that, even though Bilodeau received a harsher punishment compared to Sioui, he was able to pay the fine and avoid jail time, whereas the latter was not. Perhaps this is an indication that Bilodeau was financially stable given that he was also able to afford a lawyer.

In addition, the lack of specific detail in these two cases, especially when it comes to the type of evidence that was presented at trial, make it difficult to analyze how the judicial process unfolded. In Bilodeau's case, unlike the one involving Laliberté, there is no breakdown of the fees he had to pay. Consequently, it is difficult to identify possible evidence that was used against him at trial.[126] By contrast, Sioui's case is slightly more specific. For instance, on the same day Judge Arthur Fitzpatrick convicted Sioui, he also gave the order for a "confiscation".[127] While there is no mention about what exactly was seized, it can be assumed that it was alcohol or liquor making equipment such as a still, since that was usually taken away as part of the confiscation order.[128] If this is correct, it can provide a couple of answers to a few questions. First, it can be assumed that Sioui was charged with violating a section of the *Indian Act*'s alcohol ban. Second, the alcohol found in his possession may have been used as evidence against him at trial, and if this was the case, it would explain why he was convicted; the crown had physical evidence that proved his transgressions.

As a branch of the state, the RCMP continued to play a key role in enforcing the *Indian Act*. In fact, though a majority of the men and women who were charged under the act were Wendat, certain provisions of the law could also be applied to non-Indigenous peoples. On November 4th, 1937, Roch Allaire from Joliette was charged with "Loi des Indiens" by RCMP

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[125] *Delaney v Bilodeau*
[126] Ibid.
[127] *Delaney v Sioui*
[128] For another example of liquor being seized as part of the judge's confiscation order, see *Turgeon v Groslouis* (10 August 1939), Québec 17552 (Québec Cour des Sessions de la Paix)

member J. Romeo Roy.[129] According to the court docket, Allaire was arrested without a warrant and brought before the Honourable Judge Hugues Fortier. When asked to enter his plea, the defendant, without a lawyer by his side, pled guilty.[130] Following his admission of guilt, Allaire was immediately convicted and sentenced to either pay a $50 fine plus applicable fees or spend one month in jail.[131] The accused chose the former and paid the total fine of $53.90 and the matter was resolved.[132] While some details are missing, the offence Allaire was charged with provides an interesting analytical starting point. The *plumitif* states that Allaire was accused of contravening the *Indian Act* for "ventes substances enivrantes".[133] Based on that information, Allaire was charged with violating the *Indian Act*'s alcohol ban because his actions went against the government's goal of regulating Indigenous peoples' alcohol consumption. In other words, by providing "Indians" with alcoholic substances, Allaire was undermining the government's efforts to assimilate them into Canadian society.

Like the three other RCMP officers who brought *Indian Act* violations before the court, J. A. Turgeon was no exception. On August 10th, 1939, he arrested Désiré Groslouis, a resident of the "Village des Hurons", for "Infr[action] à la Loi des Indiens".[134] Following his apprehension, Groslouis was taken before the Honourable Judge T. Tremblay, and when asked to enter his plea, the accused, accompanied by his lawyer, Maître G. Coot, pled not guilty.[135] After entering his plea, Judge Tremblay adjourned for the day and set the next court date for October 16th. On that day, with all parties present, Groslouis suddenly changed his plea to guilty.[136] As such, the presiding judge accepted his guilty plea and ordered that all liquor found in his possession be seized immediately. In addition, Judge Tremblay sentenced Groslouis to either pay a fine of $10 plus applicable fees or be imprisoned for eight days, if he was unable to pay.[137] Unable to pay, a warrant for his imprisonment was issued and Groslouis was taken to the local jail to serve out his sentence.[138] Compared to other cases involving *Indian Act* violations, this one contains important details that shed light on the circumstances of Groslouis' arrest. To begin, even though the

[129] *Roy v Allaire* (4 November 1937), Québec 15024 (Québec Cour des Sessions de la Paix)
[130] Ibid.
[131] Ibid.
[132] Ibid.
[133] Ibid.
[134] *Turgeon v Groslouis* (10 August 1939), Québec 17552 (Québec Cour des Sessions de la Paix)
[135] Ibid.
[136] Ibid.
[137] Ibid.
[138] Ibid.

plumitif does not explicitly state which part of the act was contravened, the judge's order to confiscate the liquor found in Groslouis' possession makes it clear that he was charged for going against the act's alcohol ban. In particular, it can be inferred that his actions contravened section 137, which made it an offence for "every Indian or non-treaty Indian" to make, manufacture, or possess any alcoholic substance.[139] Given that this provision applied only to "Indians", as defined by the state, it is evident that, by charging Groslouis under this act, the legal system both reinforced and upheld his racialization. Furthermore, the confiscation order reveals more clues on how the judicial process may have unfolded. For instance, the alcohol that was found in his possession may have also been used as evidence against Groslouis in his trial, and perhaps this concrete proof of his guilt is what convinced him to change his plea from not guilty to guilty.

While most cases involving *Indian Act* violations were brought forward by state actors, there were two instances in which a member of the reserve filed charges against other Wendat men. On May 30th, 1938, Jules Sioui, from the "Village Huron", accused Maurice Bastien, the Indian agent of the Wendat reserve, of "Infrac[tion] à la Loi des Indiens, 3 chefs."[140] According to an article published in *Le Soleil* on June 11th, the plaintiff alleges that, on May 23rd, Bastien violated the *Indian Act* during the Wendat elections because "[il] ne s'était pas tenu au bureau durant les heures spécifiés par la loi et [qu']il avait accepté la candidature de J.H Vincent, comme grand-chef et de Maurice Picard, Mathieu Bastien et Emery Sioui, comme sous-chefs, alors qu'ils n'étaient pas des Indiens."[141] After the formal complaint was filed, Bastien turned himself in and he appeared before the Honourable Judge Hugues Fortier on June 3rd.[142] Though the *plumitif* indicates that he entered a plea, the writing is illegible, however, a preliminary inquiry was scheduled for June 10th, which indicates that he pled not guilty.[143] When they reconvened, Sioui's lawyer, Maître Paul Lesage, spoke on his client's behalf asking for "[…] la permis[sion] d'abandonner la […] plainte", and five days later, on June 15th, Judge Fortier decided to grant this motion.[144]

Unlike the plaintiffs in the other cases that involve *Indian Act* violations, Jules Sioui is the only Indigenous person to file this type of complaint. One the one hand, this case reinforces

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[139] *Indian Act,* R.S.C. 1906, c 81, s 137.
[140] *Sioui v Bastien* (30 May 1938), Québec 15967 (Québec Cour des Sessions de la Paix)
[141] "Plainte Retirée," *Le Soleil*, Juin 11, 1938, p 19.
[142] *Sioui v Bastien*
[143] Ibid.
[144] Ibid.

the idea that Aboriginal peoples were not passive victims of colonialism; rather, they chose to actively engage in the justice system on their own terms. This is seen most clearly in Sioui's decision to file a complaint against a state official and bring his grievance before a court of law.[145] While this reflects a certain level of agency, it is also the result of his prominent status in the Wendat community as a political activist. In fact, throughout the 1920s, 30s, and 40s, Sioui became known as a fierce proponent of Indigenous self-determination and openly opposed the federal government's paternalistic approach by writing petitions to the Department of Indian Affairs (DIA), organizing meetings with other Aboriginal chiefs and community leaders, and travelling to Ottawa on several occasions.[146] As such, his status as a well-known political activist made him more informed than most about the workings of the law. On the other hand, this case also sheds light on how colonialism and state intervention limited one's agency. According to the *plumitif*, Sioui's lawyer, Maître Paul Lesage, on behalf of his client, asked that all charges be dropped against the accused.[147] Unfortunately, no explanation was given, however, an article published in *Le Soleil* on June 11th reveals a possible reason behind this request. For instance, the article explained that during Bastien's trial "le département des Affaires Indienne d'Ottawa émit l'opinion que l'article du code criminel invoqué ne s'appliquait pas en cas de différend Indien."[148] Based on the department's involvement in this case, on behalf of their employee, it is possible that the state's decision to intervene influenced Sioui's decision to withdraw his complaint against Bastien. Therefore, while in theory Sioui's knowledge of the law and his political status may have given him an important advantage over others, in practice, this case clearly demonstrates that his agency was constrained by the colonial framework in which he lived.

Four months later, on September 26th, 1938, Jules Sioui was once again in a Québec City courtroom after he accused a second community member, Narcisse Savard, of "Infraction à La Loi des Indiens". [149] The hearing began seven days later, on October 3rd, and when the Honourable Judge Hugues Fortier, asked Savard to enter his plea, the accused, accompanied by

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[145] Ibid.
[146] For more information on Jules Sioui as a Wendat activist and fierce advocate of Indigenous self-determination see Hugh Shewell, "Jules Sioui and Indian Political Radicalism in Canada, 1943-1944." *Journal of Canadian Studies* 34, no. 3 (1999): 211-242.
[147] *Sioui v Bastien*
[148] "Plainte Retirée," 19.
[149] *Sioui v Savard* (26 September 1938), Québec 16369 (Québec Cour des Sessions de la Paix)

his lawyer, Maître J. Blais, pled not guilty.[150] Judge Fortier released Savard on a promise to appear and the case was adjourned. On October 17th, the case continued; all parties were present before the Honourable Judge T. Tremblay, and Sioui's lawyer, Charles Dorion, presented his evidence against Savard before the court session ended and the case was rescheduled.[151] When the court reconvened on October 20th, Savard's lawyer "[a] présente verbalement une motion demandant le renvoi des procédures".[152] After this motion was submitted, Judge Tremblay adjourned for the day and on October 21st, he accepted the motion and the case was dismissed.[153]

Similar to Sioui's previous encounter with the legal system, this case also demonstrates his knowledge of the law as a tool of social regulation. In fact, an article published in *Le Soleil* on October 4th, 1938 demonstrates that not only was Sioui aware of the *Indian Act*'s existence, but he also knew how to use it against other Indigenous people. For example, according to this piece, "M. Savard a été traduit devant le magistrat pour répondre à une accusation assez spéciale. Durant les six mois qui ont précédé le 26 septembre dernier, il aurait résidé au village huron de la région Québécoise sans avoir obtenu l'autorisation nécessaire."[154] Unfortunately, neither the *plumitif* nor the newspaper explicitly mention which part of the *Indian Act* Savard was accused on contravening. However, based on the wording in the article, this charge likely refers to section 33, which stipulates that "No person, or Indian other than an Indian of the band, shall without the authority of the Superintendent General, reside or hunt upon, occupy or use any of the land or mash, or reside upon or occupy any road, or allowance for road, running through any reserve belonging to or occupied by such band."[155] As a result, it is clear that Sioui used this provision of the *Indian Act* against Savard with the goal of regulating who was – and by extension, who was not – allowed to reside on the reserve.

In conjunction with the racialization that was deeply embedded in the criminal court system through the *Indian Act*, the language barrier between state officials and Indigenous offenders exacerbated the growing challenges associated with navigating the legal system. While a significant portion of the current scholarship examines this issue within the healthcare system,

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[150] Ibid.
[151] Ibid.
[152] Ibid.
[153] Ibid.
[154] "Chez les Hurons," *Le Soleil*, Octobre 4, 1938, p 16.
[155] *Indian Act*, R.S.C. 1906, c 81, s 33, https://heinonline-org.lib-ezproxy.concordia.ca/HOL/Page?handle=hein.castatutes/rcanpun0002&id=557&collection=castatutes&index=

it is equally important to analyze how the lack of familiarity with legal terminology impacted Indigenous offenders' encounter with the judicial system.[156] While the question on the language barrier can be applied to a majority of my court cases, *Genest v. Sioui (1923) and Dion v. Picard (1919)* provide concrete examples of the language barrier between the Wendat and the legal system, and its potential impact in the courtroom. According to the case file, the Honourable Judge Arthur Lachance stated that he explained the pending charges against Sioui. For example, he wrote "je lui ai expliqué la substance de l'accusation portée contre lui […]"[157] On the one hand, this gives the impression that, in theory, Sioui was given a clear and thorough explanation of the charges brought up against him. However, because the case file does not include a detailed description of the judge's explanation, there is no way to know what was actually said to him. On the other hand, even if this legal explanation was given to him, it is unknown whether or not Sioui actually understood what was said. As such, it is impossible to know for certain if he knew what he was admitting to when he entered his guilty plea to Judge Lachance. This is not to say that because of his Indigenous identity, Sioui did not understand French. Rather, this line of inquiry questions to what extent Sioui genuinely understood what he was pleading guilty to and the consequences of his declaration of guilt. Therefore, Sioui's unfamiliarity with legal terminology would have given the prosecutor an advantage over him. If this is so, it clearly contradicts the image of a fair and impartial judicial system.

Moreover, the court documents that describe Narcisse Picard's encounter with the justice system in 1919 call into question his level of comprehension in relation to the legal process. For instance, on the "Cautionnement" form, Picard's name is written at the bottom of the page, but it is not his signature. Instead, there is an "x" in between both his first and last names, and right above his name, it says "sa marque" in the Honourable Judge Philippe-Auguste Choquette's handwriting to indicate that Picard signed the document with an 'x'.[158] This example creates some doubt on whether or not Picard understood the gravity of the situation and its potential consequences. Although illiteracy was widespread at the time and does not necessarily indicate a lack of experience in legal matters, this example does suggest that perhaps Picard possessed a

[156] Karen Stote, for example, explores how linguistic barriers played a vital role in the forced sterilization of Indigenous women in Canada during the mid-twentieth century. For more information see "An Act of Genocide: Colonialism and the Sterilization of Aboriginal Women," (Winnipeg: Fernwood Publishing, 2015).
[157] *Genest v Sioui*
[158] *Dion v Picard*

basic knowledge of the Canadian court system. Thus, it is certainly possible that he did not completely understand what he was signing. Nevertheless, this line of inquiry speaks to the power imbalance between the state and its legal actors vis-à-vis Indigenous peoples, and the former's ability to potentially manipulate and take advantage of the latter's unfamiliarity with the system.

The court cases analyzed in this chapter make it clear that a majority of the racialization experienced by the Wendat was not visible. In fact, out of the sixteen[159] cases that were analyzed, only one, *Dion v. Picard (1919)*, exhibited clear signs of racialization. For every other case in this collection, it occurred in more subtle ways because it was deeply embedded in the legal system. Consequently, racialization manifested itself in the types of crimes the Wendat were charged with and their subsequent unequal treatment before the law. In the first part of this chapter, a total of nine cases were used to analyze the different ways in which the Canadian government's social and moral regulation strategies resulted in the racialization of the Wendat before the law. In particular, I examined how the *Indian Act*'s alcohol ban on Indigenous peoples was an integral part of social and moral regulation. The importance of alcohol restriction as a strategy for moral regulation is reflected in the court cases. According to my findings, seven of these nine cases included alcohol related infractions. In addition, of these seven, 5 were complaints brought forward by state institutions such as Québec's liquor commission and officers from the RCMP, and only one did not result in a conviction. This clearly reflects how various government agencies worked together to enforce moral regulations against the Wendat. Furthermore, it is interesting to note that all nine defendants were men and there was only one female plaintiff, Dame Ludivine Dion. Based on this information, it appears that Wendat men were likely to be charged for violating the alcohol ban than their female counterparts. However, this does not necessarily mean that Wendat women were not racialized under the *Indian Act*'s alcohol ban. Rather, it could reflect how, in general, criminal courts tend to deal more with men than women.

In the second section of this chapter, I drew from seven cases to examine how the *Indian Act* was used as a pretext to bring the Wendat into contact with the criminal justice system. In turn, increasing the chances of the Wendat encountering the legal system for behaviors that were

[159] This number does not include Arthur Paquet v. Robert Sasso (1926), the Black man whose racialization in the court system was used to demonstrate how unequal treatment before the law was not unique to Indigenous peoples, but rather was a shared reality for other minorities.

not criminalized under the Criminal Code. Similar to the first part of this chapter, Wendat men make up the majority of those accused of violating the *Indian Act*. Out of the seven cases that contravened the Loi des Indiens, there were six male defendants, and of those six, four were Wendat; three lived on the reserve and one resided in the city of Loretteville. This finding is significant because, based on this study, it appears as though Wendat men were the ones being charged under the *Indian Act*. However, this could be due to the fact that Wendat women are disproportionately underrepresented in criminal courts; according to my case study, only one was charged for contravening the *Indian Act*. Again, this does not mean that they were not arrested and tried for *Indian Act* violations. Similar to the cases I examined in the first section, infractions related to the act were mostly brought forward by state officials who enforced government regulations. In fact, five of the seven cases were brought to the court by members of the Royal Canadian Mounted Police, and of these five, three involved Wendat defendants. What is most interesting about this is the 100 percent conviction rate. While there are a number of possibilities that could explain this such as the defendant's plea during the preliminary hearing, the prosecutor's arguments, and the strength of the evidence presented at trial, it demonstrates the likelihood of conviction for cases brought forward by state officials. Finally, it is interesting that two of these seven cases were filed by a Wendat, Jules Sioui, which not only showcases his knowledge of Canadian law but also his ability to use the legal system to resolve conflicts within the community.

Chapter 3: Interpersonal Relationships

As colonial empires expanded deeper into Aboriginal peoples' territories, so too did colonial law. Initially, the law focused on adjudicating crimes amongst colonizers and between Indigenous and non-Indigenous peoples. However, extending the rule of law to encompass other types of crimes became increasingly important as settlers sought to create permanent settlements by establishing a "legally structured society."[1] A significant part of this judicial expansion included the desire to bring *inter se* crimes – crimes committed between members of the colonized population – under the purview of colonial law. Over the years, a number of scholars such as Hamar Foster, Mark Walters, and Sidney Harring, have contributed to this field of study. In fact, the overarching theme in the scholarship focuses on the challenges nineteenth-century colonial officials faced when trying to incorporate Indigenous peoples within their judicial frameworks. Foster, for instance, examines the different ways state officials in British North America sought to extend their legal jurisdiction beyond Rupert's Land. More specifically, he argues that the *Canada Jurisdiction Act of 1803* and the 1821 *Regulation of the Fur Trade Act* did not establish legal authority in the west due to a lack of judicial institutions and no real effort to apply these laws to Indigenous peoples in the area.[2] In other words, the legal measures that were introduced did not produce uncontested jurisdiction, which resulted in the Crown's inability to make their presence felt in the prairies. That being said, Foster explores the gaps between officials in Upper Canada and the lived realities on the ground out west. For instance, even though the 1821 act granted the Crown the ability to administer legal proceedings for civil and criminal transgressions in Rupert's Land and beyond, Hudson's Bay Company (HBC) employees, whom they relied on to implement these laws, believed that "its law enforcement obligations did not apply to offences committed among Indians […]"[3] As such, *inter se* crimes, especially those that occurred outside HBC territory, were rarely brought to the attention of colonial officials in the Province of Canada, thereby limiting the legal reach of British

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[1] Sidney L. Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: University of Toronto Press, 1998), 26.
[2] Hamar Foster, "Long-Distance Justice: The Criminal Jurisdiction of Canadian Courts West of the Canadas, 1763-1869," *American Journal of Legal History* 34, no. 1 (1990): 43.
[3] Ibid. 37.

authorities. Nevertheless, extending the rule of law to Indigenous peoples and lands remained a growing concern in the Canadas. But without concrete means to do so, Canadian officials had few options. Thus, Foster suggests that part of the colonial strategy involved giving the HBC loosely defined authority over Aboriginal peoples until state officials were in a position to extend their legal jurisdiction beyond current territorial boundaries.[4] As a result, it was only after the creation of the Dominion of Canada followed by the country's purchase of Rupert's Land from the HBC in 1869 that state officials were finally in a position to implement concrete measures to extend their legal jurisdiction.

Similar to Foster, Walters examines the challenging situation colonial officials encountered when trying to determine the legal status of First Nations in British North America. In particular, he argues against the notion that the 1822 *R. v. Shawanakiskie* case laid the groundwork for *inter se* crimes being subject to colonial law.[5] Drawing from documents that he maintains were misinterpreted, he argues that this case "did not deny native jurisdiction over internal native matters, nor did it subject natives to colonial criminal jurisdiction in all cases."[6] Indeed, under certain circumstances, crimes committed between Indigenous peoples did not automatically fall under the colony's legal jurisdiction. To illustrate these challenges more clearly, Walters deconstructs the wording used in the English laws that were introduced in the colony. For example, he argues that not only were English statutes written in broad terms with no explicit exemption for Indigenous peoples and their lands, but First Nations living in unceded territories continued to practice their customary laws with minimal interference from officials on the ground.[7] In fact, he believes that this inability to get involved stemmed from the realization that before British authority could be properly established on the frontier, Aboriginal lands had to be ceded to the Crown.[8] According to Walters, what makes *R. v. Shawanakiskie (1822-1826)* case different was the fact that the murder of an Indigenous woman by an Ottawa man occurred on ceded and settled Crown lands.[9] As such, the Crown was able to successfully claim legal jurisdiction over the area, and thus, the right to put the accused on trial, where he was eventually

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[4] Ibid. 33.
[5] Mark D. Walters, "The Extension of Colonial Criminal Jurisdiction over the Aboriginal Peoples of Upper Canada: Reconsidering the Shawanakiskie Case (1822-1826)," *University of Toronto Law Journal* 46, no. 2 (1996): 274.
[6] Ibid. 274.
[7] Ibid. 289.
[8] Ibid. 285.
[9] Ibid. 293.

found guilty of capital murder.[10] Therefore, while the Crown did indeed struggle to extend their legal reach into other parts of Indigenous lands, it was easier to justify their legal presence in areas where permanent settlements were already established. However, Walters demonstrates that the Crown's opinion was not shared by everyone. In fact, in a case report submitted by Justice William Campbell to Lieutenant Governor, Peregrine Maitland, the judge stated that "[…] Indians of this Country are in no case amenable to our Laws, being exempted therefrom by Treaty […]." As such, he asked the Governor to overturn Shawanakiskie's conviction.[11] Thus, Walters illustrates that colonial officials were clearly not unanimous when deciding whether or not crimes committed between Indigenous peoples should fall under colonial law.

Building off Foster and Walters, Harring examines how Canadian criminal law was applied to Indigenous people during the early years of state formation. More specifically, Harring argues against the idea of liberal treatment of First Nations by demonstrating that Canada consistently denied Aboriginal peoples their basic rights.[12] Part of his analysis focuses on how state officials in the Province of Canada dealt with *inter se* crimes at a time when extending their legal reach to the frontier presented significant challenges. For instance, Harring maintains that, depending on the types of social relationships that existed on the ground, there were two sets of laws; one that applied to offences committed within the reach of British authorities and another for *inter se* crimes that took place on Indigenous lands.[13] As a result, if crimes between Aboriginal peoples occurred where the presence of colonial officials was minimal, it was harder to enforce colonial law. Exacerbating this issue was the gap between state officials in the east and those in other parts of the country. For example, judicial discretion gave judges the ability to dismiss cases without having to justify their decisions.[14] Therefore, judges had a significant amount of leeway when it came to trying cases, which sometimes contradicted state officials in the Canadas. Furthermore, Harring also examines the socio-legal implications of applying Canadian criminal law to Indigenous peoples by analyzing a series of wendigo killings that came to the attention of Canadian authorities at the turn of the twentieth century.[15] On the

[10] Ibid. 293.
[11] Ibid. 293.
[12] Harring, *White Man's Law*, 11.
[13] Ibid. 110.
[14] Ibid. 117.
[15] According to the spiritual beliefs of the Algonquin, a wendigo is an evil spirit that inhabits the body of a person. Most sightings occur during the winter months when starvation and famine are more common, thus allowing the spirit to take control of weakened members of the community. Once it takes possession of a human body, the

one hand, similar to Foster and Walters, the author uses these examples to illustrate the challenges colonial officials faced when trying to implement the rule of law. In particular, he focuses on the traditional legal framework of the Ojibwa-Cree and the deeply embedded religious and spiritual codes of conduct that sought to resolve internal disputes.[16] On the other hand, these examples reflect the extent of state expansion Post-Confederation and the act of legal imperialism.[17] Thus, state officials' intrusion into First Nations' legal and spiritual worlds was part of the way in which they bolstered their colonial authority.

Evidently, colonialism was indeed something that was done to Indigenous peoples, which had a devastating impact on communities in North America – and in other parts of the world. For instance, the destruction caused by the introduction of European diseases to the continent, the estimated numbers of Indigenous peoples who perished since contact, and the intergenerational trauma caused by the legacy of Residential Schools are well documented. As Foster, Walters, and Harring demonstrate, however, Indigenous peoples were not passive victims of colonialism. Rather, they also had a level of agency; especially when it came to negotiating and renegotiating their role in terms of the new colonial order and deciding which elements of European culture to adopt or disregard.[18] Therefore, although colonialism impacted the dynamics between settlers

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wendigo acts erratically and becomes fuelled by greed and an insatiable appetite for human flesh. Moreover, if left to its own devices, the condition could worsen, and the wendigo could transform into a beast-like creature. Given that a wendigo poses a significant threat to the local community, the Algonquian would kill them. When placing these instances into the larger context of law and colonialism, the four wendigo killings that Harring discusses are significant because, on the one hand, they shed light on the legal worlds of the Cree, Saulteaux, and Ojibwa. (237) More specifically, these court cases coupled with the fact that community members openly spoke about these killings demonstrate that punishing a wendigo with death was viewed as an appropriate way of keeping the community safe. (237) On the other hand, the arrest, trial, and conviction of the men accused of killing a wendigo is also a reflection of legal imperialism and the desire of the Canadian state to bring colonial law to the frontier. (237) For more information on wendigo killings see Sidney Harring, 'The Enforcement of the Extreme Penalty;" Canadian Law and the Ojibwa-Cree Spirit World," in *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: University of Toronto Press, 1998).

[16] Harring, *White Man's* Law, 219.

[17] Ibid. 217.

[18] Similar to Hamar Foster, Mark D. Walters, and Sidney Harring, historian J.R. Miller examines the topic of Aboriginal peoples' agency. In particular, his piece "Owen Glendower, Hotspur, and Canadian Indian Policy" (1990) aims to deconstruct the narrative that paints First Nations as passive victims of colonialism, rather than active historical agents who engaged with the colonial system. Miller argues that the implementation of Canada's nineteenth century assimilationist policies such as the ones that implemented cultural bans, the Pass System and Residential Schools were weakened by Indigenous peoples' acts of resistance, thereby rendering government initiatives less effective. However, Miller's sole focus on Aboriginal agency as acts of resistance appears to cast aside the devastating impact of colonialism, especially in relation to the Residential School system. For example, Miller argues that even though Residential Schools were designed with a "totalitarian and assimilative spirit", it "never reached more than a minority of young Indians and Inuit." (396) Although this is true, it does not negate the fact that this experience had a profound effect on the lives of those who were swept up in the Residential School system. Therefore, even though Aboriginal agency must be recognized, it is equally important to place it within a

and First Nations, the latter continued to actively engage in the colonial system. But, a number of historians, such as Robin Brownlie and Mary-Ellen Kelm caution against focusing solely on Indigenous peoples' agency and acts of resistance. In particular, they argue that this analytical lens can lead some scholars to "go beyond the argument for the recognition of Native agency to one that uses evidence of Native resilience and strength to soften, and at times to deny, the impact of colonialism, and thus, implicitly, to absolve its perpetrators."[19] As such, they maintain that it is important not to remove Aboriginal peoples' agency from the colonial context that simultaneously shaped and restricted their actions. Among those who Brownlie and Kelm believe have erroneously applied this analytical framework is historian J.R. Miller. In his work, Miller states that he is skeptical about the effectiveness of Canada's nineteenth century assimilationist policies.[20] For example, when assessing the impact of the cultural ban on Indigenous peoples, Miller argued that while some would "wait until the Indian agent was not expecting a dance and then hold it" others chose " […] to seek informal approval for a modified version of their forbidden dance […]"[21] Although their ability to adapt to these conditions demonstrates a certain level of agency, Miller's focus on their behaviours as acts of resistance fails to take into consideration that these actions occurred within a colonial structure that limited their ability to respond and react. Therefore, as emphasized by Brownlie and Kelm, it is vital to strike a balance between emphasizing Indigenous agency and acknowledging the ways in which it was limited by colonialism.

With this in mind, this chapter explores both the legal ramifications of colonization on First Nations across Canada and the role of Indigenous peoples as active historical agents who navigated the colonial world. More specifically, I seek to balance recognizing the law as a tool of colonial control that was implemented by the state while acknowledging that, at the same time, the Wendat saw it as a forum in which they could possibly find redress for injustices committed against them or resolve conflicts occurring within their own communities. As such, this chapter builds on the existing scholarship of law and colonialism and Aboriginal agency by exploring the different ways the Wendat interacted with the legal system. I argue that Wendat men and women

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colonial framework that both shaped and limited their ability to act. For more information on this see J.R. Miller, "Owen Glendower, Hotspur, and Canadian Indian Policy," *Ethnohistory* 37, no. 4 (1990): 386-415.

[19] Robin Browlie and Mary-Ellen Kelm, "Desperately seeking absolution: Native agency as colonialist alibi?," *Canadian Historical Review* 75, no. 4 (1994): 545.

[20] J.R. Miller, "Owen Glendower, Hotspur, and Canadian Indian Policy," *Ethnohistory* 37, no. 4 (1990): 393.

[21] Ibid. 394.

engaged with the justice system in three important ways; to mediate internal tensions, resolve intimate disputes between spouses, and settle conflicts with non-community members. Organized thematically, this chapter is divided into three main sections and examines a total of eleven cases, including the 1939 dispute between Pierre-Albert Picard and Jules Sioui, which to my knowledge, never made it to court. In the first section, I focus on internal conflicts by examining the different ways three members of Wendat society engaged with the court system to resolve tensions between community members. More specifically, I frame this analysis within traditional Wendat conflict resolution methods to illustrate how the plaintiffs adapted to the expectations of this colonial institution. In the second part of this chapter, the focus shifts to domestic disputes with a thorough examination of Wendat spouses. In particular, I analyze how three women and one man engaged with the legal system to hold their partners accountable to them and their families. Finally, I conclude with an in-depth analysis of two cases involving one Wendat man and woman who sought to resolve their conflicts with non-community members through legal intervention.

Based on my research, the final two cases I examined in the previous chapter were not the only ones in which a Wendat filed a complaint against another member of the reserve. In fact, Wendat men who held positions of power with a significant amount of influence on the community also used the legal system as a means to resolve internal conflicts. Among them was Chief Ovide Sioui. On April 16th, 1920, Ovide Sioui, who is described in the case file as "grand chef de la tribu Huronne, de Loretteville", filed two separate complaints against Michel Sioui.[22] Appearing before the Honourable Judge Philippe-Auguste Choquette, Ovide Sioui declared in his first statement that "le six avril 1920, […] Michel Sioui, étant un sauvage faisant parti de la tribu huronne de Lorette ayant été requis pas le plaignant […] de cesser de faire usage et d'occuper pour les fins de déposer son bois, un chemin ou route de la réserve, a illégalement manqué de se conformer à l'injonction susdite."[23] As such, Ovide Sioui requested that Michel Sioui be charged for "refus de se conformer à un ordre".[24] After signing Ovide Sioui's statement, Judge Choquette did not issue an arrest warrant. Instead, the accused appeared before the court on his own and was let go on a promise to appear for his next court date, which was scheduled

[22] *Sioui v Sioui* (16 April 1920), Québec 429 (Québec Cour des Sessions de la Paix)
[23] Ibid.
[24] Ibid.

three days later.[25] When the proceedings resumed on April 19th, Michel Sioui pled not guilty when asked by the presiding judge to enter his plea, and the trial was set to begin in five days. Unfortunately, the case file does not include any information about what was said during the trial, however, it contains a list of witnesses who testified at Michel Sioui's trial: Maurice Bastien, Joseph Samuel Picard, Ludger Bastien, Adilard Lavoeau, and Charles Gros Louis.[26] After the trial ended, Judge Choquette rendered his verdict on May 4th, where he found Michel Sioui guilty "pour avoir obstrué le chemin d'un passage public" and sentenced him to either pay a $5 fine plus applicable fees for a total of $45.[27] However, should he be unable to do so, Sioui would have to serve fifteen days in jail.[28] The following day, Michel Sioui paid the total fine of $35.75 and the matter was settled.[29]

That same day, the Grand Chief of the Wendat, Ovide Sioui, filed a second complaint against Michel Sioui as part of the earlier incident; this time, naming the accused's wife, Eugénie Beaumont, as a co-defendant.[30] Having accused the couple of "voies de fait", Ovide Sioui described in his written statement that "le quinzième d'avril 1920, à Loretteville, sur la réserve huronne […] Michel Sioui et son épouse, née Beaumont ont illégalement menacé de violence, assailli, frappé, et autrement maltraité le plaignant susdit".[31] After accepting Ovide Sioui's statement, the Honourable Judge Philippe-Auguste Choquette issued a warrant for the couple's arrest, and later that day, both Michel Sioui and his wife, were taken into custody.[32] It is not clear if the couple appeared together or separately before the judge, but the two defendants pled not guilty.[33] After they entered their plea, both of them were granted a conditional release pending their next court date.[34] As part of their release, Michel Sioui and his wife were placed into the custody of her father, Pierre, on a promise to appear in court on April 24th, but should they fail to do so, Pierre would be liable for a $100 surety.[35] On April 24th, for reasons that are not mentioned in the case file, Michel Sioui and his wife changed their plea to guilty.[36] Following

[25] Ibid.
[26] Ibid.
[27] "Pour Avoir Assailli le Grand Chef," *Le Soleil*, Mai 4, 1920, p 14.
[28] Ibid.
[29] Ibid.
[30] *Sioui v Sioui and Beaumont* (16 April 1920), Québec 430 (Québec Cour des Sessions de la Paix)
[31] Ibid.
[32] Ibid.
[33] Ibid.
[34] Ibid.
[35] Ibid.
[36] Ibid.

their admission of guilt, the judge accepted their statements and he sentenced them both to pay a $5 fine plus applicable fees.[37] After the verdict was rendered, the couple paid a $20 deposit, and by May 5th, the remaining balance of $28.20 was paid.[38]

These two cases stand out because of what they can tell us about how Wendat chiefs used the legal system to resolve internal conflicts within their community. Unlike the other cases I analyze in this chapter, they are the only ones to list a Wendat leader as a plaintiff. This demonstrates that all levels of Wendat society, including those who held important positions of power within the community, engaged with the judicial system to a certain extent. Therefore, Chief Sioui seems to have treated this institution as a valid option to resolve disputes with members of his community.[39] Moreover, the circumstances that led Ovide Sioui to file a complaint against Michel Sioui indicate that bringing this incident to court was part of the resolution process. For example, in his first written statement, Ovide Sioui revealed that the reason both parties came before the court was because Michel Sioui refused to respect the injunction that ordered him to stop using a reserve road as a place to dispose of his wood.[40] Based on that information, it appears that Ovide Sioui viewed the Canadian legal system as the next logical step in resolving a dispute since a legal intervention through the form of an injunction had already been issued.

Furthermore, a letter from the local Indian Agent, Maurice Bastien, who was also called to testify in this case, reveals that Chief Sioui and the band council collaborated with colonial institutions. For instance, after the injunction was issued, the band council gave the accused eight days to remove his barn because it was located on a road belonging to the reserve.[41] In turn, this illustrates that council members played a critical role in enforcing legal measures within the

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[37] Ibid.
[38] Ibid.
[39] This inference is supported by the legal concept of 'forum shopping'. According to Rhona Schuz, this term is defined as "a plaintiff by-passing his natural forum and bringing his action in some alien forum which would give him relief or benefits which would not be available to him in the natural forum".(374) In other words, litigants bring their cases to the court that is most likely to provide them a favourable judgement. For Indigenous peoples whose traditional legal institutions were eroded by colonialism or unable to adjudicate certain issues, colonial courts granted them the opportunity to resolve conflicts with their neighbours or find justice for wrongdoings committed against them. As such, Chief Ovide Sioui's decision to bring his case before a Canadian courtroom could be an example of the legal concept of forum shopping. For more information on this concept and its legal implications see Rhona Schuz, "Controlling Forum-Shopping: The Impact of MacShannon v. Rockware Glass LTD," *The International and Comparative Law Quarterly* 35, no. 2 (1986): 374-412.
[40] *Sioui v Sioui*
[41] Ibid.

boundary of the reserve. And, should the defendant not comply, there would be important legal repercussions. For instance, in his letter to the accused, Bastien mentions that "tout refus de votre part de y conformer, sera reconnu comme infraction à la loi et fautif d'amende suite à la loi des Sauvages."[42] On the one hand, this letter is stating that should Michel Sioui refuse to comply with the injunction, he would be subject to two laws: the Criminal Code and the "loi des Sauvages."[43] Thus, similar to the seven Loi des Indiens cases I analyzed in the previous chapter, the *Indian Act* functioned as another form of law to bring Michel Sioui – and other Wendat – into the criminal justice system. On the other hand, this letter also reveals that as leader of the Wendat, Chief Sioui, used all the methods at his disposal, including colonial institutions such as the legal system and the Department of Indian Affairs, to pressure the defendant to abide by reserve rules. Chief Sioui's decision to bring this matter before the courts and force one of his people to follow his demands is in sharp contrast to the historical role of a traditional Wendat chief. According to Wendat historian Georges Sioui, although chiefs represented the voice and soul of their people, they did not have complete authority over them and therefore, could not unilaterally impose their will.[44] Instead, their position was earned through great personal sacrifice and maintained through mutual respect and friendship with the people they represented.[45]

However, colonialism reshaped the power dynamics between community members as the legal system now became a tool that could be used to bolster the authority of the chief. In fact, for those elected after the federal government introduced the triennial electoral system in 1899, which essentially replaced traditional chiefs with elected band councils based on the principles of the Euro-Canadian political system, this was particularly beneficial.[46] In their case, the law could be used as a strategy to persuade the community to recognize their authority. For example, according to an article published in *Le Soleil* on February 11th, 1920, shortly after Sioui was

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[42] Ibid.
[43] Ibid.
[44] Georges Sioui, *Huron-Wendat: The Heritage of the Circle*, trans. Jane Brierley (Vancouver: University of British Columbia Press, 1999): 134-135.
[45] Ibid. 128-129.
[46] On May 16th, 1899, an order in council was passed as part of the federal government's Indian Policy, which sought to introduce political reform among First Nations in Canada. According to this new system, male community members aged twenty-one and older were expected to nominate and elect a community chief and a number of councillors under the supervision of the local Indian agent. For more information on the triennial electoral system and how one community responded to it see Martha Elizabeth Walls, *No Need of a Chief for this Band: The Maritime Mi'kmaq and Federal Electoral legislation, 1899-1951*, (Vancouver: University of British Columbia: 2010).

elected chief, the election was declared null and void "par suite de certaines irrégularités de sorte que les sauvages de la réserve huronne de Lorette sont obligés de reprendre l'affaire en entier, et de relancer dans une nouvelle campagne électorale."[47] Even though Sioui won the election that took place the following week on February 18th, it is certainly possible that his decision to bring Michel Sioui to court for refusing to abide by an injunction and for assaulting him was shaped by his desire to both strengthen and legitimize his authority over the community. As such, this case reinforces my main argument that Indigenous peoples engaged with colonial institutions under different circumstances and when it was in their interest to do so.

Chief Ovide Sioui was not the only Wendat man in a position of power to interact with colonial institutions. In fact, other members of the community, some of whom belonged to prominent families, also reached out to the legal system to mediate internal conflicts. On May 23rd, 1938, Ludger Bastien, a resident of Loretteville, accused Jules Sioui from the "Village Huron" of libel.[48] After accepting Bastien's complaint, the Honourable Judge Laetare Roy issued a warrant for Sioui's arrest; that same day, Sioui was apprehended and when asked to enter his plea, the defendant pled not guilty and the preliminary hearing was scheduled for eight days later.[49] On May 31st, all parties were present including Bastien and his attorney, Maître Philippe Ferland, as well as Sioui who was accompanied by his lawyers Maîtres Jean Lesage and C. N. Dorion.[50] According to the *plumitif*, the trial went on for several months and included a significant amount of back and forth between the lawyers on both sides; in fact, multiple subpoenas were issued from the plaintiff and the defence.[51] Finally, on November 5th, the Honourable Judge Cannon found Sioui guilty and sentenced him to one month in prison.[52] However, it was only on November 23rd that a warrant for his imprisonment was issued and Sioui was escorted to the local jail to serve out his sentence.[53] By December 3rd, Sioui and his lawyers filed an appeal but on February 1st, 1939, the Court of Appeal refused to hear it because it was not filed on time and, as such, Judge Cannon's decision stood.[54]

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[47] "Le Choix d'un Grand Chef chez les Hurons: La reprise de l'élection du grand chef et des sous-chefs de la tribu huronne, ordonnée par les autorités fédérales, amène une nouvelle campagne électorale," *Le Soleil*, Février 11, 1920, p 12.
[48] *Bastien v Sioui* (23 May 1938), Québec 15936 (Québec Cour des Sessions de la Paix)
[49] Ibid.
[50] Ibid.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] "Affaire classée," *Le Soleil*, Février 4, 1939, p 3.

Although the *plumitif* does not go into detail about this case, the coverage it received in the local newspaper, *Le Soleil*, fills in many of the gaps. By combining the information from both sources, *Bastien v Sioui (1938)* sheds light on how a Wendat man from a prominent family used the Canadian justice system to resolve an internal conflict and restore his reputation. Bastien's testimony, in which he addressed the personal and professional allegations made against him in an article published by Sioui on April 28th, served as an important legal strategy to correct the information that was circulating about him.[55] For example, when Sioui's lawyer, Maître C. N. Dorion, asked Bastien to confirm his place of birth, he testified under oath that he was born within the existing boundaries of the reserve.[56] Evidently, his response to this question was to dispel any notion that Bastien was not who he claimed to be. Furthermore, Bastien used his testimony to highlight his connection to the community. For instance, Bastien explained that although he no longer lived on the reserve, he actively participated in community affairs by voting in band elections.[57] On the one hand, Bastien's decision to emphasize this point demonstrates that he felt a deep attachment to his community, despite not living there. On the other hand, his willingness to use the court system against another Wendat in order to defend his reputation is ironic given that his testimony focused on the ongoing connections he felt to the community and its members.

In addition, Bastien also used the trial as an opportunity to change the narrative about him and his family by calling upon numerous individuals to serve as character witnesses. Among them was Grand Chief Herménégilde Vincent, who testified that "la famille Bastien était l'une des plus distinguées de Lorette", and that, to his knowledge, since Bastien entered politics in 1923, "aucune plainte n'avait été portée [contre lui]".[58] The decision to have Chief Vincent testify as a character witness proved to be an effective legal strategy because given his position of authority in the community, it is evident that his opinion of Bastien and his family would be

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[55] On April 28th, 1938, Jules Sioui published an article in *L'Action catholique* in which he made numerous allegations against Ludger Bastien and his family. For instance, along with publicly questioning Bastien's Indigeneity, Sioui also accused the Bastien family of using their economic and political status to take advantage of the Wendat community. For the entire article, see Jules Sioui. "Tribune libre: Mise au point d'un chef huron." *L'Action catholique: organe de l'Action sociale catholique,* Avril 28, 1938.

[56] "Le procès d'un régime à la cour: Le procès de Jules Sioui diffamatoire devient celui du "régime Bastien" en Cour d'Assises – Les Indiens de la réserve huronne de Lorette," *Le Soleil*, Novembre 4, 1938, p 3.

[57] Ibid. 19.

[58] "Témoignage du grand chef Vincent en cour d'assises: Le grand chef des Hurons de Lorette, M. Herménégilde Vincent a déclaré hier au procès Sioui-Bastien, aux assises, que la famille Bastien était l'une des plus distinguées de Lorette," *Le Soleil*, Novembre 5, 1938, p 28.

taken into consideration. This view of the Bastien family was reinforced by the testimony of 83-year-old Raphael Dumont. According to Dumont, Bastien was "le meilleur citoyen du village."[59] Similar to Chief Vincent, the testimony of a respected elder would have definitely carried a significant amount of weight during this trial. Therefore, it is not surprising that both Chief Vincent and Dumont were summoned to the court to testify on behalf of Bastien and his family.

Along with examining Bastien's journey through the legal system, it is equally important to take into consideration the circumstances that led him to seek redress through the Canadian court system rather than traditional Wendat conflict resolution. On the one hand, it is possible that after years of contact with European settlers and increasing state intrusion, traditional conflict resolution methods had eroded to the point where they were no longer a viable option to deal with internal disagreements. Historically, kinship ties founded on the principles of mutual respect, friendship, mediation, communication, and trust were woven into the social fabric of Wendat society as a way to prevent conflicts from escalating; this was rooted in the idea that clan membership and alliances operated as a system of conflict resolution that offered people a code of conduct for regulating disputes and social problems, thereby, reducing the chances of increased tension between community members.[60] Although disagreements did occur, kinship ties acted as a social safeguard to avoid escalating conflicts. Furthermore, these values were deeply ingrained in Wendat law and manifested themselves through community building strategies. For instance, rather than using coercive authority like in Western systems of law, the Wendat resolved problems through gift-giving, negotiation, and consensus.[61] In turn, this allowed clans to work together to resolve conflicts while maintaining friendships. However, colonialism gradually chipped away at these social bonds, in turn reducing the ability of traditional forms of conflict resolution to be utilized. Consequently, this forced the Wendat to turn to Canadian law.

On the other hand, Bastien's socio-economic status in the community coupled with his political connections may have also influenced his decision to resolve an internal conflict in the Canadian court system. To begin, Bastien was a well-established and well-respected businessman in the community. According to the testimony he provided during Sioui's trial, Bastien is the current co-owner of the Bastien Bros leather goods company, which was originally

[59] Ibid. 28.
[60] Sioui, *Huron*-Wendat, 117.
[61] Ibid. 126-127.

founded by his ancestor, Maurice E. Bastien in 1826.[62] As the co-owner of a company, Bastien occupied a privileged position in the community that provided him with the opportunity to develop important relationships with other businessmen. Thus, it is possible Bastien chose to pursue legal action against Sioui because his allegations would have negatively impacted these relationships. Along with being a prominent entrepreneur, Bastien was also a politician with important political connections. For example, after years of serving as a member of the band council, Bastien was elected to the Quebec Legislative Assembly in 1924.[63] After losing his re-election in 1927, Bastien returned to local politics and two years later, he was elected grand chief of the Wendat in 1929.[64] Evidently, Bastien's long political career allowed him to familiarize himself with provincial and federal law and enabled him to establish friendships with men who held important positions of power. Given his knowledge of Canadian institutions, it is not surprising that Bastien chose to seek redress through the legal system. However, it is important to note that as a member of the prominent Bastien family and the son of former chief Maurice Sebastien, Ludger Bastien was able to access certain opportunities that would not be possible for other Wendat men and women born into less affluent families. Thus, while his accomplishments are very impressive, the socio-economic status he inherited from his family enabled him to pursue his personal and professional ambitions.

The vast majority of cases analyzed in this thesis focus on the part of the dispute that plays out in the courtroom. However, there is one incident involving the former chief and Indian agent of Lorette, Pierre-Albert Picard, whose situation provides a glimpse into how an interpersonal conflict may have unfolded prior to legal intervention. Between 1939 and 1940, Picard sent a number of letters to the Department of Indian Affairs (DIA) in an effort to resolve a territorial dispute with another member of the reserve, Jules Sioui. In a letter he wrote to the Superintendent of Indian Affairs on July 17th, 1939, Picard described how this conflict began and what he intended to do about it should it not be resolved quickly and efficiently. According to this letter, Picard stated that on July 14th, DIA inspector, M. Thibault, visited the reserve to inquire about the band council's grievances on a number of issues, which included Sioui's request to obtain a parcel of land that was currently owned by his mother, the widow of the late

[62] "Le procès d'un régime," 19.
[63] "Bastien, Ludger," Culture et Communications Québec, last modified 2013, http://www.patrimoine-culturel.gouv.qc.ca/detail.do?methode=consulter&id=15378&type=pge#.X0FTLC2z1AY
[64] Ibid.

Paul Picard.[65] Although Pierre-Albert Picard was not present at the time of Thibault's visit, he later found out that the council expressed their interest in giving into Sioui's demands. However, he made it clear in his letter that as heir of the estate, he was completely opposed to this action since he possessed legal title to this land.[66] For reasons that are not made clear in this letter, nor in subsequent ones, after Thibault's visit, a decision was made by the DIA and Sioui was granted the piece of land he requested.[67] In turn, this began a year-long conflict in which Picard frequently wrote letters to his former employers demanding they reverse their decision and return his father's land to him.[68]

To my knowledge, this case never made it to court; even so, it remains one of the most interesting cases in my study because of what it tells us about how disputes unfolded prior to being taken before a judge. First, Picard's position as both the former chief and Indian agent of Loretteville influenced how this conflict played out from 1939 to 1940. For instance, Picard was appointed as the Indian agent on September 1st, 1929; a position he held for two years until he was relieved of his duties on February 21st, 1931 and replaced by Maurice Earl Bastien two months later on April 27th.[69] As a result of his involvement in federal and local politics, Picard had access to the Canadian government, which allowed him to voice his concerns directly to the source. This can be seen by the number of letters he sent to the DIA. According to his personal records, between 1939 and 1940, Picard sent a total of six letters, including the first one he sent to voice his initial concerns over the plan to give Sioui his father's land.[70] Thus, his status as a former chief and employee of the DIA granted him a privilege that was not offered to other members of the community; that of directly communicating with the DIA. In addition to his successful professional life, Picard was also a member of a well-known Wendat family, which in turn, shaped his interaction with the Canadian government. In particular, he was the grandson of Chief Tahourenche, renamed François-Xavier Picard, who held this position from 1870 until his

[65] Correspondence from Pierre-Albert Picard to the Superintendent of Indian Affairs, 17 July 1939, P883 S5/4 Box 2007-01-016\4, Folder 11, Fonds Famille Picard, Bibliothèque et Archives Nationale du Québec, Québec City, Québec, Canada.
[66] Ibid.
[67] Ibid.
[68] To see all the letters associated to this year-long conflict, see Fonds Famille Picard, 2007-01-016\4. Bibliothèque et Archives Nationale du Québec, Québec City, Québec, Canada.
[69] G. M. Matheson, *Historical directory of Indian Agents & Agencies in Canada*, (Ottawa: Claims and Historical Research Centre, Indian and Northern Affairs Canada, 1960), 67.
http://publications.gc.ca/collections/collection_2018/aanc-inac/R32-413-1960-eng.pdf
[70] Albert Picard to the Superintendent of Indian Affairs, 17 July 1939.

death in 1883.[71] The prestige attached to this status created a variety of opportunities for Picard, including the ability to be educated at the Séminaire de Québec, from which he graduated with a diploma in rhetoric in 1900.[72] Therefore, Picard's former position as chief and Indian agent coupled with his educational background allowed him to engage with the DIA; something that would not be possible for members of his community who did not have the same level of education or direct access to government officials.

Moreover, Picard's education and knowledge of rhetoric shaped his correspondence with the DIA and parliament officials. One strategy he used was to combine metaphors with references to the international conflict taking place in Europe at the same time in order to evoke a certain reaction from the recipients of his letters. For instance, when he referred to a similar dispute that occurred in 1910 between the band council and an unknown member of the reserve in a letter written on July 17th, 1939, Picard described the council as acting in a "dictatorial way."[73] On the one hand, this language demonstrates that Picard was aware of the global issues going on at this time such as Adolf Hitler's rise to power in Germany. On the other hand, it also served to warn Canada and its officials against following the same path as countries that distorted the rule of law for their own personal gain. Picard reiterated the importance of protecting the values of truth, justice, and private property from misrepresentation in a letter written to Mr. Hugues Lapointe, a Member of Parliament, on May 8th, 1940. In this correspondence, he stated that "il faut nécessairement reconnaitre que la vérité a ses droits comme la justice a ses droits; et le Département a été odieusement trompé par la perfidie de son représentant à Lorette, puisque j'ai un droit indiscutable de propriété et d'occupation sur le dit lot de terre, selon la preuve faite. Laissons à Hitler son système répugnant."[74] Visibly frustrated with the DIA and their inability to quickly and efficiently resolve this dispute, Picard was appealing to the rule of law and the notion that governments, like all citizens, are subject to the law. Therefore, by using Hitler as an example, he was demonstrating his disappointment that the Canadian government and the DIA were acting like dictatorships by subverting the law for their own personal benefit instead of treating it as an objective set of principles by which all citizens

[71] Patrick Brunelle, "Un cas de Colonialisme Canadien: Les Hurons de Lorette entre la fin du XIXe et le début du XXe siècle" MA diss., Université Laval, 1998, 13.
[72] Ibid. 14.
[73] Pierre-Albert Picard to the Superintendent of Indian Affairs, 17 July 1939.
[74] Correspondence from Pierre-Albert Picard to Mr. Hughes Lapointe, 8 May 1940, P883 S5/4 Box 2007-01-016\4, Folder 11, Fonds Famille Picard, Bibliothèque et Archives Nationale du Québec, Québec City, Québec, Canada.

must abide by. Furthermore, Picard's references to the rule of law were strategically employed to illicit a reaction from the reader. For instance, instead of framing his critique within traditional Wendat law, which was based on the principles of interpersonal autonomy and achieving consensus through negotiation, Picard chose to invoke the liberal values that purport to underpin the rule of law. Evidently, this was done with the purpose of appealing to the senses of the Canadian government and DIA officials whose institutions were founded on the values he used to plead his case.

In addition, Picard used legal terminology and the threat of judicial intervention. He reinforces his point when he states that "every legal means will be made use of, against any encroachment of aforesaid property."[75] His focus on private property is very interesting, and there are a number of things that could explain it. First, given his French-Canadian education, it can be assumed that his interest in preserving his family's property was influenced by his exposure to non-Indigenous culture and values, which included the importance of individual liberties and private property as markers of citizenship. Thus, it appears that, although Picard was Wendat, his way of thinking was deeply shaped by Western principles. Also, it is equally possible that Picard's insistence to keep his father's land was more personal as he sought to fulfil his father's final wishes. Although he does not specifically mention that his father bequeathed this land to him in his will, he does state that he is the heir to the estate, which implies that he was the next of kin.[76] Aware of his legal options, Picard invoked the possibility of bringing this matter to court on a couple of occasions. For instance, after months of corresponding with DIA officials, Picard sent a follow up letter to Lapointe on May 22nd, 1940. In this letter, he demanded that the department take responsibility for mistakenly giving Sioui his father's land "sinon je demanderai justice devant la cour et dans ce cas j'aurai besoin de mon dossier."[77] Thus, it is evident by Picard's statement that he is fully aware of his legal options, and as such, this knowledge assisted him in trying to reclaim his property. Unfortunately, however, the letters do not indicate whether or not the piece of land was ever given back to him. Nevertheless, Picard's letters give us a glimpse into how a man from a well-known Wendat family used his education

[75] Pierre-Albert Picard to the Superintendent of Indian Affairs, 17 July 1939.
[76] Ibid.
[77] Correspondence from Pierre-Albert Picard to Mr. Hughes Lapointe, 22 May 1940, P883 S5/4 Box 2007-01-016\4, Folder 11, Fonds Famille Picard, Bibliothèque et Archives Nationale du Québec, Québec City, Québec, Canada.

and familiarity with Canadian bureaucracy to try and resolve a conflict he had with another community member.

While Ovide Sioui, Ludger Bastien, and Pierre-Albert Picard used colonial institutions to mediate disagreements with their neighbours, others engaged with the system to resolve domestic disputes with their spouses. Out of the five cases I identified that involved a conflict between intimate partners, four were brought forward by Wendat women. From those four cases, three included women who charged their husbands with failure to provide the necessities of life and one of those three later accused her husband of attempted murder; only one case involved a husband filing a complaint against his wife. These findings are significant because the noticeable gendered division seems to be at odds with the patriarchal values enshrined in the *Indian Act*. On the one hand, this act granted male heads of households an enormous amount of economic, political, and social power over their wives and children, thereby rendering them dependent on a man's good will. This new reality contradicted the Wendat's matrilineal society in which clan mothers exercised a great deal of authority such as arranging marriages, regulating the wealth of their community, educating children, and negotiating peace and war.[78] However, the patriarchal framework disrupted the Wendat's traditional system, and as such, women were removed from these social connections. On the other hand, as we will see, these three Wendat women actively engaged with the colonial system to ensure their survival and hold their husbands accountable all while navigating a new colonial order that essentially excluded them from holding positions of power in their communities.[79]

One of these women included Philomène Latulippe whose first interaction with the Canadian legal system demonstrates how this colonial institution was used by Wendat women who sought the help of the law to deal with their neglectful husbands. On April 24th, 1923, Latulippe filed a complainant against her husband, Napoléon Gignac, accusing him of "refus de pourvoir".[80] In her complaint, Latulippe stated that "son époux résident à Loretteville […] depuis

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[78] Sioui, *Huron-Wendat*, 119-120.

[79] There is a substantial body of literature that exists on women and gender in Iroquoian, Haudenosaunee, and Iroquois societies. While each author approaches the subject in their own way, the theme that is woven throughout the scholarship is the desire to bring women to the forefront of the narrative by shedding light on the important roles they held in their respective communities. Among them is historian Martha Harroun Foster who examines the invisibility of Iroquois women in existing literature. In particular, Foster explores the different methodological and historical motivations behind their erasure in an effort to place the analytical focus back on these marginalized women. For more information on this see Martha Harroun Foster, "Lost Women of the Matriarchy: Iroquois Women in the Historical Literature," *American Indian Culture and Research Journal* 19, no. 3 (1995): 121-140.

[80] *Latulippe v Gignac* (24 April 1923), Québec 286 (Québec Cour des Sessions de la Paix)

un an et auparavant, et encore actuellement refuse et néglige sans excuse légitime de pourvoir à ses besoins, la laissant par là, dans l'indigence et la nécessité."[81] That same day, the Honourable Judge Philippe-Auguste Choquette issued an arrest warrant for Gignac and by May 3rd, the accused was apprehended and brought to court. Standing before the judge, Gignac pled not guilty and the trial was scheduled for May 11th.[82] However, according to the court docket, neither the defendant, the plaintiff, nor their respective counsel were present that day. As such, the judge stated that evidence of Gignac's alleged wrongdoing was insufficient, thus he concluded that "la plainte est renvoyée."[83]

This case is significant because it demonstrates the reasons why Wendat women engaged with colonial law. This is seen most clearly in the language that is used in Latulippe's statement. For instance, according to her deposition, the plaintiff described that, as a result of Gignac's neglect, she was living in poverty for over a year.[84] On the surface, this explanation is straightforward; the plaintiff is providing a clear reason why she chose to file a complaint against her husband. However, I believe it is important to place this statement within its context, in particular the colonial institution and its underlying patriarchal principles. Traditionally, given that kinship ties were established through the female line, Wendat women were surrounded and supported by their kinfolk.[85] As a result, women could rely on their social connections in times of need. With the introduction of patriarchal systems and the removal of Wendat women from positions of power, however, these connections were lost, and they were forced to turn to others for support. Thus, by employing this rhetoric that emphasizes her dependence on her partner, Latulippe was appealing to the patriarchal values that placed husbands as sole providers for their families and wives as economic dependants on their partners. In other words, Latulippe adapted to this system by using language that was meant to elicit a certain reaction; one that would view her husband's transgressions and failure to provide for his spouse as going against the patriarchal norms at a time when the Wendat were pressured to conform to Western gender norms. Furthermore, there are a number of reasons why both Latulippe and her husband did not show up for court on May 11th. First, perhaps the couple chose to resolve their issues amongst themselves.

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[81] Ibid.
[82] Ibid.
[83] Ibid.
[84] Ibid.
[85] Sioui, *Huron-Wendat*, 124.

In addition, it is also plausible that either one, or both, decided they did not want to invest their time and money on a process that would take place in a foreign institution and in a language they may not have been familiar with. This line of interpretation is supported by the fact that Latulippe did not write her own statement; instead, she described the events, someone else wrote it down, and she signed the document with the letter 'x'.[86]

The following year, Philomène Latulippe and her husband, Napoléon Gignac, were once again in a Canadian courtroom. This time, however, the situation between them seemed to have escalated and the charges were a lot more serious. On July 14th, 1924, Latulippe filed a complaint against her spouse for "tentative de meurtre".[87] According to her statement, Latulippe described that "le douze Juillet 1924, dans la paroisse de Loretteville, […] son époux Napoléon Gignac, de Loretteville, a criminellement tenté de tuer et assassiner dame Philomène Latulippe […]."[88] The case file does not indicate whether an arrest warrant was issued for the accused. However, it does reveal that Gignac appeared before the Honourable Judge Arthur Lachance the same day his wife accused him of attempted murder and that the presiding judge scheduled the preliminary hearing for July 17th.[89] In the meantime, Gignac was "envoyé en prison sur mandat […]" until the start of the trial.[90] That same day, Judge Lachance issued two separate subpoenas for a number of witnesses who were believed to have pertinent information regarding the events that unfolded between Latulippe and Gignac.[91] Unfortunately, detailed witness testimony is not included in the case file, but based on the statement that was written and signed by Judge Lachance on November 4th, 1924, the trial lasted over four months and after all the witnesses testified, and when the judge asked the accused to enter his plea, Gignac pled not guilty.[92] But, for reasons that are not explained in the case file, the defendant was convicted that same day and ordered to serve his sentence of an unknown length at a psychiatric hospital in Québec.[93]

Whereas *Latulippe v. Gignac (1923)* sheds light on how the plaintiff navigated the legal system, the second case shifts the focus back to the state by examining their response to *inter se* crimes, especially ones of a violent nature. Indeed, this court case stands out from the rest of the

[86] *Latulippe v Gignac* (24 April 1923)
[87] *Latulippe v Gignac* (14 July 1924), Québec 444 (Québec Cour des Sessions de la Paix)
[88] Ibid.
[89] Ibid.
[90] Ibid.
[91] Ibid.
[92] Ibid.
[93] Ibid.

ones I examine in this chapter because it is one of the richest files. In fact, the magnitude of this case is clearly seen by the number of people who were involved in the court process and the traces they left behind in the form of letters, reports, notes, and transcripts. Aside from both parties and the presiding judge, witnesses, priests, medical professionals, and the couple's children were all involved at different points throughout this process. In fact, as I stated previously, there were a number of witnesses who were called to testify at Gignac's trial. For example, Madame Joseph Robitaille, Mr. Renaud, Alfred Gignac, and Mr. Auclair were among some of the individuals subpoenaed by the court.[94] Unfortunately, some of their testimonies have been lost to history. But, the number of witnesses who were included in this trial reflects the complexity of this case. Among them were psychiatrists, who played a critical role in this process. For example, while the defendant was in jail awaiting trial, he was evaluated by Dr. Roy from the Hôpital St. Michel Archange on July 26th, 1924; in his letter to the Honourable Judge Philippe-Auguste Choquette, the psychiatrist concluded that "Napoléon Gignac est un aliéné et qu'il devrait être interné dans un Hôpital d'aliéné."[95] Not only did this expert witness testimony impact the judge's decision to convict Gignac, but more importantly, it illustrates how different institutions coordinated their efforts to prosecute *inter se* crimes. Three years later, this collaboration between state officials continued. For instance, on August 17th, 1927, Dr. Roy sent another letter to the presiding judge based on his re-evaluation of Gignac. According to his most recent assessment, Dr. Roy states that Gignac "souffre évidement d'idées de persécution, orientées surtout, du côté de sa femme" and he recommends that, at the very least, the defendant should be placed in a long-term care facility for the elderly.[96] While the amount of detail is truly impressive, it can almost certainly be explained by the violent nature of the crime that was committed and the need for the judicial system to treat this case with caution and precision. Thus, it is evident that, when it came to violent *inter se* crimes, collaboration between state institutions was an integral part of the judicial process.

Along with the procedural information, the case file also provides personal details about the couple. For instance, we know that Latulippe is from Loretteville and she is listed as the "épouse commune en biens de Napoléon Gignac."[97] However, other than knowing where she

[94] Ibid.
[95] Ibid.
[96] Ibid.
[97] Ibid.

resides and her relationship to the accused, the case file does not mention anything else about her. Based on the information that is in the file – or the lack thereof – it is possible that her dual identity as an Indigenous woman may be to responsible for this omission. First, it was fairly common for women to either be completely left out of court records or have little information written about them. Consequently, while the decision to exclude so much detail is not surprising, it requires a closer reading of the case file in order to make inferences that can be used to fill in some of those gaps. Moreover, along with identifying as a woman, Latulippe was also Wendat, and as such, her Indian status may have contributed to her marginalization. Although Latulippe is not listed as Indigenous, she would have automatically acquired Indian status through her marriage to Gignac because prior to 1985, it was passed down exclusively through the male line. Originally, this was enshrined in section 3 of the 1876 *Indian Act* – and upheld in subsequent amendments – that defined a legal "Indian" as "any male person of Indian blood reputed to belong to a particular band, any child of such person, and any woman who is or was lawfully married to such person."[98] As a result, this patriarchal model that was used to determine Indian status not only served to undermine the Wendat's matrilineal system but it simultaneously resulted in Latulippe's racialization as an Indigenous women.

By contrast, the case file contains a lot more information about Gignac. In fact, even though it does not explicitly state that the defendant was Indigenous, I strongly believe that he was. For instance, Gignac and a few of his sons are listed as "tanneur de cuir".[99] This type of employment was not uncommon for Wendat men. In fact, starting in the mid-twentieth century and continuing throughout the 1920s, the reserve's economy revolved around this manufacturing activity. As such, a number of tanneries were located on the reserve, which provided community members with important employment opportunities.[100] Thus, it is plausible that Gignac was one of those Wendat men who was employed by a local tannery. Moreover, the strongest clue comes from the way he talks about hunting and its importance in his life during a 1927 interview with an unnamed medical professional. After the doctor informed him that he was here to inquire about whether or not he should send him to an insane asylum, Gignac stated that "je veux bien

[98] *Indian Act, 1876*, S.C. 1876, c. 18, s 3, https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/1876c18_1100100010253_eng.pdf
[99] *Latulippe v Gignac* (14 July 1924)
[100] Julie Rachel Savard, "L'apport des Hurons-Wendat au développement de l'industrie du cuir dans le secteur de Loretteville aux XIXe et XXe siècles," *Les modernités amérindiennes et inuite* 8, no. 1 (2005): 76.

allé au Sacré-Cœur ou à Beauport, mais qu'il me laisse faire la chasse."[101] Not only does this illustrate that Gignac was indifferent about going to the insane asylum, but it also highlights the cultural value and significance of hunting not only as an economic activity but as a Wendat tradition; one that would allow Gignac to maintain a link with his Wendat heritage.

Aside from Philomène Latulippe, Dame Marguerite Burke also used the justice system to resolve an intimate dispute with her spouse. On July 22nd, 1925, Burke filed a complaint against her husband, Eugène Sioui, accusing him of "refus de pourvoir".[102] The same day the complaint was filed, Sioui was apprehended and appeared in court before an unknown judge.[103] When asked to enter his plea, standing alongside his lawyer, F. Gosselin, Sioui pled not guilty and the trial date was set for July 30th.[104] For reasons that were not mentioned in the *plumitif*, the trial began one day earlier than scheduled; nevertheless, the complainant was present with her three lawyers, Bernier, DeBilly, and Dorion, and the defendant appeared with his counsel.[105] However, there is no information about what happened during the hearing. In fact, all we know is that a judgement was not rendered, and the case was adjourned.[106] When the court resumed on August 5th, Sioui was given a conditional sentence, and the matter was settled.[107]

The marital dispute outlined in the *plumitif* was in sharp contrast to the romantic wedding ceremony described two years earlier in an article in *Le Soleil* on Wednesday August 1st, 1923. According to the writer, "la cérémonie eut lieu dans la pittoresque église huronne" with the young Irish bride wearing "une jolie robe" while the chiefs wore their "uniformes de gala, ainsi que leurs plumes."[108] While neither the *plumitif* nor the newspaper explain what happened between Burke and Sioui between then and now, this article certainly paints a very different picture of the couple. When combining the information from this article with what we know from the court case, this domestic conflict sheds light on how Wendat women used the judicial system to hold their partners accountable while also revealing the complex dynamics of spousal disputes. To begin, the court docket does not include Burke's original statement, however, the crime she charged her husband with reveals possible clues about her reasons to file a complaint

[101] *Latulippe v Gignac* (14 July 1924)
[102] *Burke v Sioui* (22 July 1925), Québec 507 (Québec Cour des Sessions de la Paix)
[103] Unfortunately, the *plumitif* does not include the name of the judge who presided over this case.
[104] *Burke v Sioui*
[105] Ibid.
[106] Ibid.
[107] Ibid.
[108] "Marriage Sioui-Burke," *Le Soleil*, August 1, 1923, p 12.

against him. For instance, according to the plumitif, Burke accused Sioui of failure to provide.[109] Although I was unable to find the version of this law that was applicable at the time, it can be inferred that, more often than not, wives were financially dependent on their husbands, in turn, rendering them more vulnerable to economic hardships should their spouse refuse to support them. Thus, it is highly probable that, similar to Philomène Latulippe, Burke charged her husband with failure to provide because she relied on him financially and without his support, she was forced to live in poverty. Despite these financial hardships, the plumitif makes it clear that Burke was able to afford a lawyer. However, I do not believe that this calls into question the severity of her financial situation because although the plumitif does not indicate whether or not she lived on the reserve, it is possible that if she did, the lawyers may have been provided by the band's funds.

Ten years later, Wendat women continued to use the legal system as a way to resolve domestic disputes. On July 13th, Dame Valéda Marcotte, residing on the "Reserve Indienne de Loretteville", filed a complaint in front of the Honourable Judge Arthur Fitzpatrick against her husband, Eugène-Abraham Sioui, also from the same reserve, accusing him of "refus de pourvoir".[110] After accepting her statement, the judge issued a warrant for Sioui's arrest and three days later, he was apprehended and brought to the local courthouse. Accompanied by his lawyer, Maître Paul Lesage, Sioui stood before the Honourable Judge Laetare Roy and when asked to enter his plea, the accused pled not guilty.[111] Following his statement, the presiding judge set the trial date for July 21st, and in the meantime, Sioui was granted a conditional release on a promise to appear in court.[112] According to the plumitif, when court proceedings resumed on the 21st, all parties were present, which included Sioui and his lawyer, as well as Marcotte and her attorney, Maître Bienvenue.[113] This marked the beginning of the trial, which lasted over four months. In fact, they reconvened a total of ten times before the Honourable Judge Arthur Fitzpatrick found Sioui guilty on September 3rd, 1936.[114] For reasons that are not indicated in the

[109] *Burke v Sioui*
[110] *Marcotte v Sioui* (13 July 1936), Québec 13273 (Québec Cour des Sessions de la Paix)
[111] Ibid.
[112] Ibid.
[113] Ibid.
[114] Ibid.

file, a sentencing hearing was scheduled two months later, and on November 24th, Judge Fitzpatrick issued a "sentence suspendue".[115]

Similar to *Latulippe v. Gignac (1923)* and *Burke v. Sioui (1925)*, this case reinforces my argument that Wendat women engaged with the justice system to ensure their survival, voice their grievances, and hold their spouses accountable. First, like Burke, Marcotte's original statement is not included in the plumitif, however, certain inferences can still be made. For example, based on the information that is available and the similarities between both cases, it can be assumed that Marcotte charged her husband with "refus de pourvoir" because his decision to stop providing her placed her in a very difficult financial situation.[116] The circumstances that led Marcotte to be financially dependent on her partner are worth analyzing. The economic reality that Marcotte – and other Wendat women – lived through was significantly different from that of their ancestors. In matrilineal societies, people traced their descent through the female line and as a result, women were the social hubs of their communities. In fact, older women, or clan mothers, held important positions of power, which essentially allowed them to direct life in the longhouses they occupied by allocating resources to each family member.[117] For example, at the end of the community's seasonal harvest, all goods were given to clan mothers who then redistributed these resources to the members of their longhouses.[118] Moreover, women's roles were an important part of the community's subsistence production. For instance, while men hunted, fished, and cleared the fields, women were responsible for growing maize, beans, and squash and picking fruit.[119] As such, their work was valued because it formed an integral part of the community's survival, in turn allowing them to be economically independent from their husbands. However, as previously stated, colonial policies coupled with pressure to conform to Western gender norms chipped away at Wendat women's economic independence, thus making them dependent on their husbands. Furthermore, this case demonstrates that Wendat women's interaction with the judicial system continued well into the following decade; thus, illustrating a

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[115] Ibid.
[116] Ibid.
[117] Jan Noel, "The Powerful Influence of Iroquois Women," *Herizons: Women's News and Feminist Views*, 2011. http://www.herizons.ca/node/566
[118] Ibid.
[119] Natalie Zemon Davis, "Iroquois Women, European Women," in *Feminist Postcolonial Theory: A Reader*, ed. Reina Lewis and Sara Mills (Edinburgh: Edinburgh University Press, 2003), 136

continuity throughout the 1920s and 1930s. This is significant because it sheds light on the role of the judicial system in Wendat women's lives and their ability to access this institution.

When it came to domestic disputes, my research revealed that the majority of plaintiffs were Wendat women. However, I found a court case where a Wendat man brought a complaint forward against his wife. On June 14th, 1926, Théophile Groslouis of Loretteville accused his wife, Angélina Garneau, also from Loretteville, of vagrancy.[120] After accepting Groslouis' statement, the Honourable Judge Philippe-Auguste Choquette issued an arrest warrant for the complainant's wife; the following day, the accused was apprehended and appearing before the Honourable Judge Arthur Fitzpatrick alongside her lawyer, Maître Parent, Garneau pled not guilty.[121] When the case reconvened on July 25th, all parties were present, including the defendant and her attorney as well as the plaintiff and his lawyer, Maître Bédard.[122] After evidence of an unknown nature was presented by Groslouis' counsel, the case was once again adjourned, but in the meantime, the accused was granted "liberté sur parole".[123] After the same sequence of events occurred when the court was back in session on July 2nd, the judge set the next trial date for one week later. On July 9th, neither the plaintiff nor the defendant appeared in court, as such, Judge Fitzpatrick ordered the "plainte déboutée".[124]

Like a majority of cases I examine in this thesis, the information is limited and there is a significant amount of details we do not know. Nevertheless, inferences can be made based on the information that is present in the plumitif. The offence Groslouis charged his wife with provides a good starting point for this analysis because it gives us an indication of what may have happened. According to the plumitif, Garneau was accused of one count of vagrancy.[125] As I explained at the beginning of the previous chapter, at the time, there were twelve ways a person could be charged with this offence. Thus, although the plumitif does not explicitly state the circumstances under which Garneau was charged, her actions were likely to have been included in the list of illegal behaviours. In addition, the nature of their relationship could also explain why Groslouis decided to charge his wife with vagrancy. For example, perhaps Garneau left him,

[120] *Groslouis v Garneau* (14 June 1926), Québec 401 (Québec Cour des Sessions de la Paix)
[121] Ibid.
[122] Ibid.
[123] Ibid.
[124] Ibid.
[125] Ibid.

or she was engaging in behaviour that he deemed inappropriate such as being a sex worker.[126] As such, Groslouis was motivated to press charges against his wife in an attempt to bring her back home or correct her behaviour. Moreover, unlike the four other domestic dispute cases, this complaint was brought forward by a male spouse. Therefore, Groslouis' decision to charge his wife with vagrancy falls in line with the patriarchal principles of Indian policy, which pressured the Wendat to conform to Western gender values that placed male heads of households as economic, political, and social guardians over their spouses and children.[127]

Although the majority of this chapter examines the Wendat's interactions with the criminal justice system in relation to *inter se* crimes, my research shows that they also engaged with this institution to voice their grievances against non-community members. One of these individuals was Eugène Sioui from the "village huron Lorette."[128] On February 25th, 1919, Sioui filed a complaint against Jules Renaud and Georges Théberge accusing them of vagrancy.[129] According to his statement, "le 23 février 1919 […] Jules Renaud et Georges Théberge, tous deux de la paroisse de Lorette, ont ensemble causé du trouble […] près du chemin public en criant, jurant, chantant, étant ivres, gênant et incommodant les passants paisibles".[130] In this same complaint, Sioui also claimed that "Jules Renaud aux mêmes temps et lieu a illégalement assailli l'épouse du susdit plaignant née Valéda Marcotte".[131] After signing off on his statement, the Honourable Judge Charles Langelier issued an arrest warrant for the accused men.[132] On February 26th, Théberge and Renaud were granted a conditional release on a promise to appear in court on March 6th, at 10am.[133] In the meantime, both men were placed into the former's father's custody, François Théberge, and the three of them were liable for $100 each should either accused break the condition of their release.[134] On March 6th, Judge Langelier explained the charge to both men and after asking them to enter their plea, Théberge and Renaud pled not

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[126] This inference is supported by section 207(i) of the 1892 Criminal Code, which states that a person could be charged with vagrancy for "being a common prostitute or nightwalker". Thus, it is possible that Garneau was engaging in sex work and her husband charged her under this law to stop her from continuing this practice. See footnote 18 in Chapter 2 for a complete list of the twelve ways a person can be defined as a vagrant.
[127] For another case that supports this analysis, *see Groslouis v Groslouis* (1 August 1931), Québec 5613 (Québec Cour des Sessions de la Paix)
[128] *Sioui v Renaud and Théberge* (25 February 1919), Québec 661 (Québec Cour des Sessions de la Paix)
[129] Ibid.
[130] Ibid.
[131] Ibid.
[132] Ibid.
[133] Ibid.
[134] Ibid.

guilty. Following their statements, the trial began with all parties present, including Sioui's lawyer, Maître Parent, and the defendants' counsel, Maître Larue.[135] There is no indication about what was said during this exchange, however, by the time it was over, Judge Langelier found the defendants not guilty, and ordered the case "déboutée avec frais".[136]

This case is significant because it reinforces my argument that the Wendat participated in the legal system to voice their grievances against non-community members. More specifically, it sheds light on how they navigated a foreign institution and adapted to its expectations. First, Sioui followed all the necessary steps in this legal process. For instance, he filed a complaint shortly after the incident took place, submitted a sworn statement, hired a lawyer, attended the hearing, and paid the fine he was ordered to pay.[137] Furthermore, the language Sioui used to describe the defendants' behaviour in his statement reflects his ability to adapt to this colonial institution. For example, when recounting the incident that took place on February 23rd, Sioui used the similar terminology from section 207 of the 1892 Criminal Code (CC), which defined a vagrant as someone who "causes a disturbance in or near any street, road, highway or public space, by screaming, swearing or singing, or by being drunk, or by impeding or incommoding peaceable passengers".[138] Thus, instead of using his own words to describe the incident from his point of view, Sioui used the language from the CC to explicitly make the connection between the defendants' behaviour and the law that was broken. Although it is likely that this was done under the advice of his lawyer, the plaintiff's decision to follow his suggestion demonstrates his willingness to adapt to this system. Yet, even though Sioui tried to adapt to this system, his case was dismissed. In fact, not only did Judge Langelier dismiss his case, but he also ordered Sioui to pay $41.85 in fees.[139] Unfortunately, the plumitif does not contain an explanation for the judge's decision, but the breakdown of the fees state that seven witnesses testified at the trial; thus, given that he lost his case, the judge may have ordered him to pay for their time.[140]

According to my case study, Eugène Sioui was not the only Wendat to file a complaint against a non-community member. On December 2nd, 1922, Dame Moïse Groslouis, née Blanche

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[135] Ibid.
[136] Ibid.
[137] Ibid.
[138] *Criminal Code*, S.C. 1892 (55-56 Vic), c 29, s 207(f), http://www.canadiana.ca/view/oocihm.9_02094/91?r=0&s=1
[139] *Sioui v Renaud and Théberge*
[140] Ibid.

Larose, filed a complaint against Jimmy Saunders from Québec City accusing him of "voies de fait."[141] In her statement, she described that "le vingt-sept novembre dernier […] un nommé Jimmy Saunders de la cité de Québec, a assailli Louis Philippe Groslouis, âgé seulement de quatorze ans, le fils de la plaignante, l'a frappé, battu et autrement maltraité."[142] After accepting her statement, the Honourable Judge Philippe-Auguste Choquette issued a warrant for Saunders' arrest; two days later, he appeared before the judge and when asked to enter his plea, the defendant pled not guilty and the trial was set for December 7th.[143] The following day, Dame Moïse Groslouis withdrew her complaint and the case was dismissed.[144] Like Eugène Sioui, Dame Groslouis also engaged with the justice system to voice her grievances against a non-community member. In fact, she also followed similar necessary steps such as filing a complaint shortly after the incident took place and providing a signed sworn statement, common practices in the Canadian judicial system.[145] However, Dame Groslouis chose to drop the charges and even though no explanation was given, a number of reasons could explain this decision. First, perhaps both parties resolved the conflict prior to the start of Groslouis' trial. This would not be unheard of given that some matters could be settled outside of court. In addition, as the primary witness to the incident, it is equally plausible that, perhaps out of fear or intimidation, Groslouis' son chose not to testify, which resulted in his mother formally dropping the charges. While the reason shall never be known, this case, like *Sioui v. Renaud and Théberge (1919)* demonstrate that the Wendat did indeed engage with this colonial institution.[146]

As numerous scholars such as Hamar Foster, Mark Walters, and Sidney Harring have demonstrated, the Canadian government's decision to extend its criminal jurisdiction to include *inter se* crimes marked an important turning point in nineteenth-century state expansion. In fact, even though this act of legal imperialism was initially met with significant geographical and institutional challenges, it ensured that a variety of crimes, which were once out of the dominion's reach, were gradually incorporated into its legal framework. As a result, the Wendat were integrated into a new colonial order that prioritized an adversarial and punitive process

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[141] *Groslouis v Saunders* (2 December 1922), Québec 1072 (Québec Cour des Sessions de la Paix)
[142] Ibid.
[143] Ibid.
[144] Ibid.
[145] Ibid.
[146] For another case that reinforces this pattern see *Sioui v McDonald* (10 January 1929), Québec 1447 (Québec Cour des Sessions de la Paix)

while simultaneously disregarding their legal system. For the Wendat, this disruption chipped away at their existing conflict resolution strategies, which were founded on the principles of consensus, gift-giving, mediation, and communication. However, similar to other scholars of Aboriginal agency, this case study demonstrates that the Wendat were not passive victims of colonialism. Rather, they engaged with colonial institutions. Thus, while it is undeniable that the implementation of colonial law had a profound impact on the Wendat, they did not cease to interact this new system.

Throughout this chapter, I draw from a total of ten court cases, not including the territorial disagreement between Pierre-Albert Picard and Jules Sioui, to argue that the Wendat engaged with Canada's judicial system to mediate internal tensions, resolve intimate disputes between spouses, and settle conflicts with non-community members. Among the ten cases that were brought before a judge, half of them listed a Wendat woman as the plaintiff and of those five, four involved a domestic dispute. This finding is significant because, unlike the preceding chapters, Wendat women are equally represented. On the surface, this may give the impression that they had equal access to the court system. However, I believe that their increased presence in the case file is due to the nature of the crime they charged their partner with. Thus, given that women are most likely to be victimized by their spouses and bring their cases to the attention of authorities, this could explain why they are equally represented in this case study. Moreover, while four of the cases brought forward by Wendat women involved intimate disputes with their spouses, their male counterparts were more likely to bring charges against individuals who were not part of their immediate family. In fact, four of the five cases initiated by Wendat men listed both Indigenous and non-Indigenous people as defendants, accusing them of crimes against the person and property such as failing to abide by an injunction, assault, libel, and vagrancy. Therefore, although both engaged in the legal system to resolve different types of disputes, this case study suggests that while women were more likely to file a complaint against their husbands, men mostly filed charges against non-family members.

In addition, the discrepancy in the conviction rates and judicial outcomes of these cases are also worthy of analysis. Out of the five cases Wendat women brought before the court, only two resulted in a conviction. Since the vast majority of them dealt with domestic disputes, it is possible that the low conviction rate was due to the challenges women faced in proving spousal neglect as well as the stigma associated with abuse. That said, this inference could also explain

why one of the women, Philomène Latulippe, chose not to follow through with her first complaint against her husband. For Wendat men, however, convictions were obtained in three out of the five cases; more specifically, the three convictions were related to failing to obey an injunction, assault, and libel. That being said, the slightly higher conviction rate could be due to the fact some of these crimes were easier to prosecute. If that line of thinking is correct, this would explain the different conviction rates for complaints brought forward by Wendat men and women. While these court cases demonstrate that the Wendat navigated the criminal justice system in multiple ways, it is important to remember that, although Indigenous peoples were historical agents, their actions were shaped by the colonial context in which they lived in.

Conclusion: Reconciling Racialization and Agency

The nineteenth century marked a significant turning point in state expansion. In particular, as part of their "nation building project", the colonial governments of British North America implemented a series of economic, social, political, cultural, and ideological initiatives with the goal of solidifying their jurisdiction over the lands and peoples residing within the country. To this end, first colonial then federal and provincial governments worked together to establish various regulatory bodies that would act on behalf of the state in an effort to maintain and reinforce their sovereignty. In theory, state laws applied equally to all. However, for Aboriginal peoples, the implementation of colonial law occurred alongside the government's conceptualization of First Nations as an "Indian Problem". As such, the government enacted several pieces of legislation to regulate Indigenous peoples before finally consolidating them under the 1876 *Indian* Act. With this act, the state essentially created the "Indian" as a separate category, thus establishing two types of legal persons: "Indian" and "non- Indian". In turn, this categorization allowed state actors to implement assimilation measures as part of their official policy to transform First Nations into self-sufficient citizens. Given that this racial distinction was deeply embedded into the colonial structure, it shaped Aboriginal peoples' interaction with various state institutions, such as the legal system. Therefore, before even entering the courtroom, they were identified as separate. Yet, as this case study has shown, racialization did not always occur in an overt manner such as through discriminatory, dehumanizing, and derogatory language. Instead, in many ways, it was less visible; it became an integral part of the discourse of the state and its actors, and it manifested itself in the types of crimes they were charged with. In other words, by virtue of being Indigenous, accused persons were treated differently by the court system compared to non-Indigenous peoples.

For the Wendat, the legal ramifications of racialization are seen most clearly in the twenty-four court cases I examine throughout the first two chapters of this thesis. More specifically, these cases clearly demonstrate that while a racial bias against the Wendat did exist – as seen in *Dion v. Picard (1919)* when the accused was identified as a "sauvage" – the inequitable treatment they experienced was embedded into the colonial structure. One way this racialization manifested itself was through the criminalization of Wendat economic, subsistence,

and cultural practices, which contributed to their territorial dispossession. On the surface, the offences Wendat men such as Antoine Groslouis and Gérard Sioui, among others, were charged with give the impression that they were poachers who illegally harvested natural resources. However, these court cases illustrate that the criminalization of these men was a product of Québec's conservation system that failed to take into consideration the Wendat's usage of the land and its resources. For example, by prioritizing sport hunting, Québec's game laws undermined traditional practices while also rendering others illegal.[1] Consequently, the Wendat were excluded from participating in and benefiting from activities that had sustained the community for generations. In addition, Québec's ideological approach to wildlife conservation worked to exclude the Wendat. For instance, the notion that harvesting natural resources were not inherent rights but rather privileges that could be granted or denied by the state, was used to justify the provincial government's decision to bring wildlife management under its jurisdiction. In turn, this completely ignored the existence of Aboriginal sovereignty and concepts of property. Thereby resulting in the criminalization of Wendat men such as Sioui, who believed that his right to hunt was protected under state law.[2]

Yet, as various scholars, such as historian Darcy Ingram maintain, the exclusion of Aboriginal peoples was not an accident. Instead, it fit into the federal government's assimilationist policy that sought to move Indigenous peoples away from "primitive" economic practices and have them adopt more "civilized modes of production".[3] Thus, both provincial and federal government policies worked together to restrict the Wendat's economic, subsistence, and cultural practices. At the same time, this tactic also benefited the state because it reduced the land base of Indigenous peoples by opening up their territories to Canadian settlement. Consequently, this resulted in the Wendat's territorial dispossession by preventing them from engaging in traditional economic, subsistence, and cultural practices.

Moreover, this case study demonstrates that the Wendat's racialization was deeply embedded within the *Indian Act (1876)* and appeared through a variety of social, moral, and legal regulation tactics that sought to monitor Indigenous peoples' behaviours in the public and private spheres. Occurring as part of the federal government's assimilationist policies, one of the

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[1] Darcy Ingram, *Wildlife, Conservation, and Conflict in Quebec, 1840-1914* (Vancouver: University of British Columbia Press, 2013), 20.
[2] *Rhéaume v Sioui* (1 June 1937), Québec 14402 (Que CSP).
[3] Ingram, *Wildlife, Conservation, and* Conflict, 20.

most intrusive regulation strategies was the alcohol ban, which made it illegal for "Indians", as defined by the state, to consume, sell, supply, exchange, give, barter, produce, or be in possession of alcoholic substances.[4] Therefore, while non-Indigenous adults could consume alcohol according to provincial guidelines, Indigenous adults were strictly forbidden from doing so. The impact of the alcohol ban on members of the Wendake First Nation is clearly shown in this case study. In fact, out of the seventeen court cases I examined throughout this chapter, at least nine were related to alcohol infractions.[5] In other words, half of all cases brought before the court for going against social, moral, and legal regulation laws involved violations to the *Indian Act*'s alcohol ban. In addition, this number does not include the four Loi des Indiens cases that did not specify which aspect of the *Indian Act* Wendat defendants were accused of contravening. Thus, it is certainly possible that this number is higher than what the data currently shows.

As other scholars such as Mariana Valverde and Robert Campbell have pointed out, and as this case study demonstrates, the decision to deny Indigenous peoples the ability to consume alcohol was racially motivated. For instance, Valverde maintains that alcohol regulation targeted Indigenous peoples based on the assumption that, due to their racial inferiority, they lacked self-control, and as such, it was the government's responsibility to intervene by regulating their consumption.[6] Similarly, Campbell, states that, as an identifying marker of citizenship, the ability to consume alcohol was used to distinguish between citizens who possessed this right and those who did not.[7] By enshrining this distinction into the *Indian Act*, the racialization of Indigenous peoples was ingrained into law, which was later upheld by the court through the criminalization of the Wendat for alcohol related infractions. Thus, had the alcohol ban not existed, Narcisse Picard, Charles Sioui, and Moïse Groslouis would not have encountered the Canadian criminal justice system – at least not for alcohol related infractions.

Evidently, this case study demonstrates that the racialization that was deeply embedded into the state discourse and reinforced by the rule of law had a significant impact on the Wendat; especially in terms of the types of crimes they were charged with. At the same time, however,

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[4] *Indian Act, 1876*, S.C. 1876, c 18, s 79, https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/1876c18_1100100010253_eng.pdf

[5] The seventeen court cases do not include those involving non-Indigenous offenders.

[6] Mariana Valverde, *Diseases of the Will: Alcohol and the Dilemmas of Freedom* (Cambridge: Cambridge University Press, 1998), 162.

[7] Robert A. Campbell, "Making Sober Citizens: The Legacy of Indigenous Alcohol Regulation in Canada, 1777-1985," *Journal of Canadian Studies* 42, no. 1 (2008): 117.

this research illustrates that the Wendat were not passive victims of colonialism. Instead, they were historical agents who engaged with the justice system in a variety of ways. As historians Hamar Foster, Mark D. Walters, and Sidney Harring demonstrate the Canadian government's decision to extend its jurisdiction over *inter se* crimes resulted in Indigenous peoples' gradual incorporation into the new judicial framework and the subsequent erosion of their traditional legal systems. Consequently, it became increasingly difficult for the Wendat to rely on the principles of mediation, consensus, gift-giving and communication to resolve conflicts. As a result, the Canadian court system became a forum in which the Wendat could voice their grievances and find redress for perceived wrongdoings. Framing this analysis within the existing literature on Aboriginal agency, the ten cases I examine in the final chapter demonstrate that the Wendat interacted with the justice system in three ways: to mediate internal tensions, resolve intimate disputes between spouses, and settle conflicts with non-community members. By finding a balance between recognizing Indigenous agency and acknowledging the ways in which it was limited by colonialism, these findings build off the work of historian Shelley Gavigan who emphasizes the importance of resisting the "[…] impulse to portray every act in heroic terms."[8]

In some ways, these two themes – racialization and agency – seem to contradict each other. On the one hand, the majority of court cases presented in this case study show that the Wendat were indeed *acted upon*. In particular, the racialization embedded into the colonial structure manifested itself through the types of crimes the Wendat were charged with such as criminalizing their traditional practices and enforcing social and moral regulation through the *Indian Act*. On the other hand, an important number of cases also demonstrate that the Wendat were in fact *actors*. For instance, the Wendat navigated through the legal system to voice their grievances and find justice for the wrongs committed against them. Nevertheless, I believe it is possible to reconcile these two themes. First, reconciling both themes could be done by placing Aboriginal peoples' agency within its particular context. In fact, when analyzing specific moments or events such as Wendat men and women approaching the court system to file complaints against those who have wronged them, it is important to recognize that these actions took place in a foreign institution that followed a different set of ideological guidelines. As a result, their abilities to act may have been constrained by structural limitations that were beyond

[8] Shelley Gavigan, *Hunger, Horses, and Government Men: Criminal Law on the Aboriginal Plains, 1870-1905* (Vancouver: University of British Columbia Press, 2016), 23.

their control. When applying this approach to the legal system, researchers should strive to find a balance between recognizing the law as a tool of colonial control that was implemented by the state and acknowledging that, at the same time, Indigenous peoples saw it as a forum in which they could find redress for injustices committed against them or resolve conflicts occurring within their own communities. That being said, it is important to remember that although certain behaviours may seem like intentional or unintentional acts of resistance, they occurred within a particular setting that may have shaped their ability to act and react. Moreover, given the flexibility of this approach, it can also be used when examining the power relations between Indigenous peoples and other government branches and institutions like healthcare, housing, employment, education, and access to other services and programs.

Another way these two seemingly contradictory themes can be reconciled is by incorporating Indigenous voices. Historically, the voices of marginalized individuals such as Indigenous peoples were often left out of the narrative, which resulted in important silences that failed to include First Nations' experiences. Over the years, a number of scholars have examined this issue by deconstructing the erasure and minimization of Indigenous peoples in the collective consciousness and Canadian historiography. For example, historians Kiera Ladner and Michael McCrossan examine the pervasiveness of these issues in their analysis of the 2008 speech made by then Prime Minister Stephen Harper in which he offered a formal apology to Residential School survivors and their families for the role of the government in this system. In particular, the authors argue that Harper's description of Canadian history in which he draws from the notion of a "shared history" between Indigenous peoples and Canadians "selectively omits a history of genocide, territorial dispossession, cultural destruction, and regime replacement […]."[9] In other words, by failing to recognize that Canada was – and still is – a colonial regime, the experiences and histories of First Nations continue to be marginalized. The fact that these misconceptions about Indigenous peoples are held and perpetuated by individuals in positions of power reflects how pervasive these issues are. As such, it is vital to incorporate Indigenous voices into the narrative to eliminate the devaluation of their communities. Although incorporating Indigenous voices may be difficult when examining certain court cases from the past, combining these sources with other types of documents such as official letters, petitions,

[9] Kiera L. Ladner and Michael McCrossan, "Whose Shared History?," *Labour/Le Travail* 73, (2014): 200.

requests, personal communications, and defendants' statements can bring these voices back to the forefront.

Finally, I believe the two themes of racialization and agency can be reconciled by acknowledging that colonialism has not ended, and that its legacy continues to impact the lives of Indigenous peoples. Although the ripple effects of colonialism extend to various state institutions, the overrepresentation of Indigenous peoples in the criminal justice system has received considerable attention. Over the years, a number of government commissions, inquiries, and reports such as the Royal Commission on Aboriginal Peoples (RCAP) in 1996 and the 2015 Truth and Reconciliation Commission of Canada (TRC) were conducted in order to assess the causes of Indigenous overrepresentation and to find possible solutions to this issue. However, recent findings suggest that little has changed. Instead, Indigenous peoples continue to be disproportionately represented as victims of crimes and accused persons at all levels of the judicial system. According to a 2019 report released by the Research and Statistics Division of the Department of Justice, Indigenous peoples are overrepresented as victims of both violent and non-violent crimes. In fact, even though Indigenous peoples represent approximately 4.9% of the total Canadian population, they suffered 24% of all homicides in 2017.[10] Indigenous people, in other words, make up nearly one quarter of all homicide victims even though they represent less than 5% of the total population. This means that, compared to their non-Indigenous counterparts, Indigenous peoples are six times more likely to be murdered.[11] For Indigenous women, racialization coupled with gender-based violence places them at an even higher risk of victimization. Based on the same 2019 report, in 2017, there was a 32% increase in homicide rates for Indigenous women compared to the previous year.[12] Evidently, compared to their non-Indigenous counterparts, Indigenous men and women are significantly overrepresented as victims of crimes and it appears that their victimization continues to increase.[13]

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[10] Canada. Research and Statistics Division, Department of Justice Canada, *Indigenous overrepresentation in the criminal justice system* (Ottawa: Department of Justice Canada, 2019) at 2. https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/docs/may01.pdf

[11] Ibid. 2.

[12] Ibid. 2.

[13] Most recently, the National Inquiry into Missing and Murdered Indigenous Women and Girls released its final report on June 3rd, 2019. After listening to the stories of over 2000 people detailing their experiences with systemic racism, police indifference and mishandled police investigations, the commission concluded that the violence perpetuated against Indigenous peoples "amounts to a race-based genocide". (1) To view the executive summary of the final report please see Canada. National Inquiry into Missing and Murdered Indigenous Girls, *Executive Summary of the Final Report on National Inquiry into Missing and Murdered Indigenous Women and Girls*

Moreover, Indigenous peoples are also disproportionately represented as accused persons and perpetrators of crime. According to a report compiled by researcher Scott Clark for the Department of Justice, "Indigenous peoples are both over-policed and under-policed."[14] In other words, although Indigenous peoples are often the target of policing, they are simultaneously overlooked when in need of assistance.[15] Consequently, this has resulted in the gradual increase of their overrepresentation in the justice system. For example, between March 2009 and March 2018, the total number of Indigenous inmates in federal custody grew by 42.8%.[16] For Indigenous women sentenced to federal custody, their numbers also rose; in fact, during the same ten-year time period, it increased by 60%.[17] Thus, compared to their non-Indigenous counterparts, Indigenous peoples in Canada continue to disproportionately encounter the judicial system as both victims of crime and accused person.

Even with all of the different commissions and reports analyzing the overrepresentation of Indigenous peoples in the justice system, the common thread woven throughout each one is the cause they attribute this to: systemic racism. According to Clark, both historical and current socio-economic factors such as childhood abuse, mental illness, addiction, homelessness, and the breakdown of social bonds are the leading risk factors in increasing one's risk of victimization.[18] Indigenous people, then, are not inherently more likely to commit crime or be victimized because they are Indigenous; rather environmental factors stemming from generations of systemic racism and colonialism play a significant role in increasing their likelihood of encountering the justice system. As such, it is impossible to deny that Indigenous people continue to feel the effects of colonialism. On the surface, twentieth-century court cases such as the one involving Albert Sioui, the 70-year-old Wendat man charged with stealing wood, may seem irrelevant or even outdated in today's pursuit to find a solution to the overrepresentation of Indigenous peoples in the legal system. However, as this thesis has shown, they offer important historical insight into

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(Ottawa: Government of Canada, 2019) https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive_Summary.pdf

[14] Canada. Research and Statistics Division, Department of Justice Canada, *Overrepresentation of Indigenous People in the Canadian Criminal Justice System: Causes and Responses* (Ottawa: Department of Justice Canada, 2019) at 2. https://www.justice.gc.ca/eng/rp-pr/jr/oip-cjs/oip-cjs-en.pdf

[15] Ibid. 2.

[16] Ibid. 8.

[17] Ibid. 8.

[18] Ibid. 12.

the origins of Indigenous overrepresentation. Therefore, while they certainly highlight the deep colonial roots of Canada's justice system, they may also provide a solution to this problem.

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