Working Together

Interim Report - November 20, 2003


COMMISSION ON FIRST NATIONS AND MÉTIS PEOPLES
MEYO WAHKOTOWIN
ONE COMMUNITY
AND JUSTICE REFORM

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Executive Summary

With six months remaining in its mandate, the Commission on First Nations and Métis Peoples and Justice Reform has narrowed its focus to specific areas. This report provides a summary of what the Commission heard from the Community Dialogues, roundtables and presentations over the past 15 months. The eight critical areas are Racism, Governance and Community Development, Community Promotion and Crime Prevention, Victimization and Violence, Restorative Justice, Policing, Justice Institutions and Youth. A brief synopsis of "what was heard" is provided.

The information heard in the Dialogues bears a marked similarity to the information heard by other Commissions from the past. The lessons learned from those Commissions and the Royal Commission on Aboriginal Peoples are provided as well as a recommendation that the Government of Canada, Government of Saskatchewan, the Federation of Saskatchewan Indian Nations (FSIN) and the Métis Nation of Saskatchewan (MN-S) respond to the Justice Reform Commission by December 15, 2003 with the actions taken in response to the recommendations of the Royal Commission on Aboriginal Peoples.

This report contains a progress report on the previous eight recommendations. The Government of Saskatchewan has not created a citizen complaint review mechanism but did fund the Special Investigations Unit of the Federation of Saskatchewan Indian Nations. Guidelines for the use of police and Crown prosecutorial discretion were recommended, in light of the new *Youth Criminal Justice Act* (YCJA) dependency on the use of discretion. A recommendation that the age of presumption or transfer age of a youth be maintained at the age 16 was also made. These recommendations have not been accepted. Clear and enforceable standards in custody have been agreed to and new policy and improvements to facilities have been made. However, minimum standards of care are still sought. There was a recommendation for all partners in the justice system to work together to ensure greater knowledge and understanding of the new YCJA. Improved co-ordination and collaboration has resulted. The Government of Saskatchewan has agreed to facilitate meetings involving deputy ministers and representatives from the FSIN and MN-S. The recommended closure of East G and West G of the Regina Correctional Centre has not occurred although Corrections and Public Safety is continuing to work on the replacement of the entire centre block.

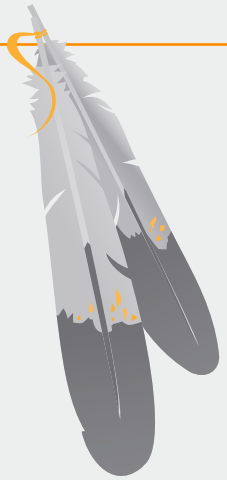
This report focuses on the need for the First Nations, Métis and non-Aboriginal peoples of Saskatchewan to work together, to be partners. Through the consultations it became apparent that this applied not only to the citizens of Saskatchewan but also to governments and to the departments and agencies within governments. There is a recognized opportunity for courts to work with the community through an array of integrated justice initiatives. Three recommendations are made to enhance community integrated justice initiatives. It is recommended that Saskatchewan Justice, together with Justice Canada, priorize the funding of community integrated justice initiatives, such as the proposed models for change. Further, it is recommended that they support and include First Nations and Métis representation in the overall implementation of therapeutic courts such as domestic violence courts, addictions courts and Aboriginal Courts. In addition, it is recommended that Saskatchewan Justice and Justice Canada install cultural symbols in all courts in Saskatchewan in recognition of the respect courts have for First Nations Treaties and the rich cultural heritage brought by First Nations and

Métis people to the Saskatchewan social and judicial fabric. The symbolic recognition will serve to remind members of the courts of the history and relationship between First Nations and Métis people and the people of Saskatchewan and Canada.

In addition, this report acknowledges the value of integrated service approaches, generally, and recommends that integrated case management become an integral part of the service delivery of every human service department or agency of the Government of Saskatchewan.

This report concludes with a proposal for a Justice Reform Implementation Vehicle to oversee the implementation of the Commission's recommendations. In recognition of the need to work collaboratively and in partnership, the Commission has asked the four partners to consider options for the proposed vehicle. In addition to options, proposed principles, mandate and essential parameters were provided for consideration. Therefore, the recommendation is that a working group be established immediately to be comprised of representatives of the Government of Canada, the Government of Saskatchewan, the Federation of Saskatchewan Indian Nations and the Métis Nation of Saskatchewan. A Commission representative will chair the group whose task is to recommend an implementation vehicle by December 1, 2003 taking into account all relevant documentation as a basis for discussion.

The final recommendation of this report is that the Implementation Vehicle come into effect immediately following the release of the Justice Reform Commission's final report in March 2004.



Vision

One Community – working together to create a healthy, just, prosperous and safe Saskatchewan

Meyo Wahkotowin

Dene Araya Who Teeya Al Then

Mission Statement

To create change and make a difference by:

- Listening to people
- Building relationships
- Promoting respect and change
- Recognizing successes, and
- Making recommendations for future justice reform

Message from the Chair

As the Commission on First Nations and Métis Peoples and Justice Reform prepares to release its third interim report, it is significant that this document is being presented at a time when justice issues are front and centre in Saskatchewan.

Two high-profile and very tragic cases have served to underscore the mandate of the Justice Reform Commission and, in fact, to provide some additional clarity to our deliberations. The Inquiry into the Death of Neil Stonechild in 1990 is underway in Saskatoon. The criminal trial that was held in Melfort of three men who were initially charged with sexual assault of a then-12-year-old girl from the Yellow Quill First Nation concluded. Appeals have yet to be heard.

Evidence is currently being heard in the Stonechild Inquiry, so the Commission is reluctant to address specific comments to the issues that have emerged. Mr. Justice David Wright will write a report on the Inquiry with the release of that document not expected for several months following the conclusion of the Inquiry.

This Commission is supportive of the Inquiry process and is encouraged by the full disclosure and factual information that has been provided by the witnesses. This aspect of the process will contribute to gaining a greater understanding of the case and how tragedies such as Neil Stonechild's death can be avoided in the future.

The Melfort case has been difficult for this Commission since details became public more than two years ago. One of our Commissioners, Hugh Harradence, acted for one of the accused in this matter. He continues to be counsel for this man who has appealed his conviction. As the case moved through the process, the Justice Reform Commission was told of widespread displeasure with the fact that one of our Commissioners was representing one of the three men accused in the sexual assault. We understood and respected the opinions of those who were opposed to Mr. Harradence's decision to remain on the Commission. It is a complex and difficult situation, one that has weighed heavily on each Commissioner, including Mr. Harradence.

This Commission recognizes that this case, in many ways, is an illustration of the issues in the justice system that affect First Nations and Métis people in Saskatchewan. As in the Stonechild case, it is too early for the Commission to comment on certain aspects since the matter is still before the court. However, the Commissioners have noted that the Melfort example speaks directly to the critical areas that we have chosen to address in our work, including children as victims and witnesses.

Every element of our mandate is touched by these matters: policing, justice institutions, victims and family violence, youth, substance abuse, the need for parenting and support for families and community responsibility for children, as well as prevention by community promotion, governance and leadership.

Family support, building bridges to relationships and prevention can and should be an outcome. While it may be premature to suggest a review of this case be undertaken, the Commissioners have determined that a closer examination of the issues is warranted.

Message from the Chair (continued)

Since the creation of the Commission almost two years ago, we have been building the framework for the final report.

This interim activity update identifies the critical issues we must all work on collectively to achieve, with principles and strategies, our desired outcomes. Your advice guides us as we continue to seek future oriented solutions that include a chance for everyone to be a "*Champion for Change*."

We have heard from you a strong desire to accept responsibility, to accept the challenges as opportunities. Honest effort and leadership will be essential if we are to realize good governance and community development. The included components of governance are:

Urbanization; community capacity; health; education and economic development.

Doing this right means a focus on community promotion that equates to prevention, which allows confidence, esteem, respect and pride. We believe if we do this right, better relationships will result which address victims, violence and survivors. With restorative justice, it should also allow for better policing with emphasis on integrated initiatives, and less reliance on institutions. There are two diametrically opposed issues that permeate every thematic level: racism and family. You have expressed your concerns in these areas. You have also identified successful initiatives and proposed solutions that will make a real difference.

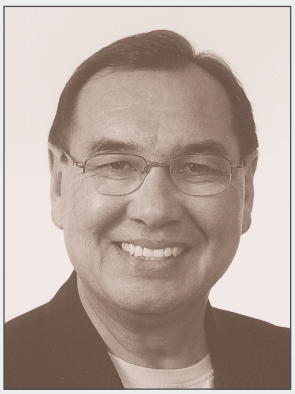
The solutions you have proposed often reflect the ideals of working together and community involvement in bringing about change. Some of the recommendations presented in this report relate to building partnerships in the provision of services, and in restorative justice.

It is very clear to us that if we do things right, there are no limits to the benefits of change. It also means it will not be easy, but the cost of doing nothing is not an option. With everyone's contribution, pulling in the same direction as one community, we will leave a trail of hope for those generations yet unborn to follow. "Kwayusk" is the vision.

In this report is an update on our previous recommendations. There is some skepticism about implementation of our recommendations. We looked again at previous Commissions' recommendations for justice reform; we know the reasons why certain recommendations have been implemented. The elements of success are in proactive, strategic plans of action and persistent follow-up. These elements include commitment, support and monitoring. Importantly, implementation will call for each of us to be involved, to step up with positive action – to be a "*Champion for Change*."

Meet the Commissioners

MR. J. WILTON LITTLECHILD



Mr. J. Wilton Littlechild, O.C., Q.C., I.P.C., acquired his law degree from the University of Alberta in 1976. Mr. Littlechild was the first Treaty Indian in Alberta to graduate with a law degree and the first Treaty Indian elected to Canadian Parliament. He is an outstanding athlete who continues to be heavily involved as an organizer in sporting events, and was inducted into four Sports Halls of Fame. He received the Order of Canada in 1999.

As a Member of Parliament (1988-1993), Mr. Littlechild served on several senior committees in the House of Commons and was a parliamentary delegate to the United Nations. At the international level, he organized a coalition of Indigenous Nations that sought and gained consultative status with the Economic and Social Council of the United Nations, and has now been appointed by the ECOSOC President to the United Nations Permanent Forum for Indigenous Peoples. He has been recognized as Queen's Counsel and Indigenous Peoples Counsel by the legal profession. Mr. Littlechild speaks Cree, English and French.

MR. HUGH HARRADENCE

Mr. Hugh Harradence, Q.C., is a partner with the law firm of Harradence Logue Holash in Prince Albert, and practises as a litigator in both criminal and civil matters. Mr. Harradence was appointed Queen's Counsel for Saskatchewan in 1999 and has recently been active as a Coroner for four inquest investigations regarding the deaths of First Nations and Métis victims in Saskatoon.

Mr. Harradence is the former president of the Canadian Bar Association, Saskatchewan Branch and has been a significant contributor within the legal community.

MS. GLENDA COONEY

Ms. Glenda Cooney is currently serving as Deputy Children's Advocate in Saskatchewan and is former Deputy Ombudsman for Saskatchewan. Ms. Cooney is Past-President of the John Howard Society of Canada and contributor to several United Nations forums on criminal justice. She has worked for the Solicitor General of Canada in policing, corrections and parole, and was a member of the National Parole Board of Canada.

Ms. Cooney has served for years as an advocate for community-based restorative justice and alternative dispute resolution.

MR. JOE QUEWEZANCE

Mr. Joe Quewezance served as the elected Tribal Chief of the Saskatoon Tribal Council for six consecutive two-year terms, between October 1988 and October 2000. While serving his terms as Tribal Chief, Mr. Quewezance represented the Saskatoon Tribal Council on the Boards of the Saskatoon Indian Institute of Technology and the Saskatchewan Indian Equity Foundation.

Mr. Quewezance has been very involved in the social and economic development of the First Nations and Métis community in Saskatoon. As a member of the Yellow Quill First Nation, Mr. Quewezance served as Chief for ten years and as a band councillor for several years.

MS. IRENE FRASER

Ms. Irene Fraser is a grandmother with a Métis background. She is also the Regional Manager of the Aboriginal Unit for the National Parole Board, Prairie Region in Saskatoon. She has been involved in several areas of the justice system for approximately 20 years. In her current work, Ms. Fraser has been heavily involved in the development and co-ordination of Elder and community-assisted parole hearings, as well as in developing and presenting to First Nations and Métis communities on legislation, policies and practices of the National Parole Board.

Ms. Fraser has served on numerous boards of organizations locally, provincially and nationally, many of which have been related to First Nations and Métis issues.

Dialogue with Saskatchewan:

Summary of Dialogues and Eight Critical Areas

INTRODUCTION

For the past 15 months, the Commission on First Nations and Métis Peoples and Justice Reform has been holding Community Dialogues throughout the province. This part of the process was designed to gather information from those people who have been in contact with the system. The Commissioners were committed to hearing from as many people as possible to develop solutions for the problems that have been identified.

Community Dialogues were held in Meadow Lake, Beauval, La Loche, Sandy Bay, Pelican Narrows, Black Lake, North Battleford, Onion Lake, Montreal Lake, Cote First Nation, Fort Qu'Appelle, Cowessess First Nation, La Ronge, Melfort and Beardy's and Okemasis First Nation. Town hall meetings took place in Prince Albert, Regina and Saskatoon. As well, the Commission has received more than 40 presentations from various organizations and individuals. The Commission has had several meetings with the Federation of Saskatchewan Indian Nations, the Métis Nation of Saskatchewan, the provincial government and the federal government.

We would like to thank those who have participated in this process and the contribution they have made to the final report, which will be released in March 2004.

Eight critical areas emerged from the Community Dialogue process: Racism; Governance and Community Development; Community Promotion/Crime Prevention; Victimization and Violence; Restorative Justice; Policing; Justice Institutions; and Youth.

RACISM

> **Why do Aboriginal people run into continuous conflict? Well, let's look at the stats again. High unemployment rates, low education levels, poor housing, poor health, poor access to recreational and other community services, of which these conditions have also existed for decades. The reasons for these numbers are a direct result of systemic racism.**
>
> *Speaker, MN-S Denholm & Western Region 1A, April 14, 2003*

Racism in the justice system itself and in society as a whole was frequently identified as being an area of great concern and difficult to address. Some people felt that racism within the justice system could be reduced if more First Nations and Métis people were employed within the justice system. Others believed racism could only be avoided through development of a separate justice system.

The inclusion of First Nations and Métis people and their perspectives at the policy and funding decision-making stage is required.

References were made to the relationship between racist attitudes, and the lack of knowledge and understanding of history, the treaties, colonization and the contributions of First Nations and Métis peoples. It was noted that many people, whether First Nations and Métis or non-Aboriginal, lack knowledge of their own individual histories and that this can affect relationships negatively. Unwillingness on the part of some to change for fear of losing power was also discussed.

There were a number of instances where it was suggested that providing opportunities for First Nations and Métis and non-Aboriginal segments of society to begin to understand and know each other could be part of the process of healing from racism. It was suggested that First Nations and Métis and non-Aboriginal peoples often still exist in two separate worlds, contributing to the perpetuation of stereotypes on both sides.

In the context of racism, concern was expressed that society is not adequately identifying and preparing for the impact of the changing demographics of Saskatchewan. For example, it was pointed out that drastic change is required to contend with the projected number of First Nations and Métis youth who will soon be entering adulthood and aspiring to join the job market. The need to have an educated First Nations and Métis workforce to balance this demographic change with the number of people coming close to retirement was noted.

GOVERNANCE AND COMMUNITY DEVELOPMENT

> **It is not recognized that we, as First Nations people, love this land or have the inherent right to govern ourselves. We had laws that worked. We must incorporate these laws. It is the treaty, the inherent right to treaties is the foundation of our very being and our very way of life. That is how, in my language, in Saulteaux, its called "pimacihowin". Pimacihowin is a very important, important aspect of our very being as First Nations people.**
>
> *Speaker, Saskatchewan First Nations Women's Council, Feb. 12, 2003*

Strong positions about governance came from the Federation of Saskatchewan Indian Nations (FSIN), Métis Nation of Saskatchewan, Prince Albert Grand Council, Meadow Lake Tribal Council and Treaty Four. However, many people talked about Treaty responsibilities and felt that it would be beneficial for First Nations to begin to exercise jurisdiction over some justice areas and to develop governance capacity. The development of an Alternative Dispute Resolution process was one example provided. This process would incorporate traditional First Nations and Métis principles and practices in resolving disputes of all kinds.

First Nations and Métis groups expressed determination to have a voice in governing decisions and policies that are made at the provincial and federal levels and to achieve the benefits that come from working together.

Jurisdiction and funding were also frequent topics of discussion. The federal responsibility for First Nations people versus the services that the province provides, the responsibilities that shift on and off-reserve, and the differential entitlements of First Nations and Métis people are some factors that create divisions.

Solutions offered in the Community Dialogues regarding Métis governance issues were wide-ranging. Issues raised extended from the recognition of Métis political and social structure to a need for better role models. It has been suggested that a land base must be established for Métis people in Saskatchewan for them to move ahead with exercising self-government. Provision of proper resources to help settle Métis land and war veterans' claims was requested. A justice and social advocate within each Métis region was suggested as one way of providing information and assistance to Métis community members. Métis people felt there should be less disparity between funding provided to First Nations and the Métis, and therefore, called for more meaningful consultations regarding the justice system with Métis communities, leaders, individuals and Elders.

Funding was an issue at many Dialogues, particularly regarding pilot projects that tend to be funded just long enough to start showing success. The substantial amount of time and energy that goes into securing funding – usually short-term – and responding to the variety of reporting requirements in the community was raised. The over-reliance on volunteers within communities was seen as unfair and results in "burn-out" for community members.

COMMUNITY PROMOTION/CRIME PREVENTION

It was generally acknowledged that one solution to over-representation of First Nations and Métis peoples in the justice system is to work towards the ideal of healthy, prosperous communities. There was recognition given to the root causes of crime such as addictions, unemployment, poverty and deficiencies in parenting, education, recreation and health. It was noted that until such causes are addressed, crime would continue to occur.

Addiction treatment needs to be bolstered within communities, particularly in the North and especially for youth. Employment was seen as a key factor in reducing First Nations and Métis involvement in the justice system. Poverty issues underlying negative behaviours were identified as being areas that need attention. Meeting basic needs, such as housing, would make a positive impact. Creation and expansion of recreation programs and facilities for youth were stipulated as needs in all the Community Dialogues.

> **For young offenders, I have a few relatives or a few cousins that have been in the young offender jail, and I don't know, it's – like my community, there is nothing there for our young people. There is school, that's about it, and then after school there's what, well, drinking, smoking dope, that's it, and that's where the crime starts for young offenders, the drinking and smoking dope. If they don't have the money to go buy their dope, they go pull a B and E for it. If they don't have money to go get drunk, they go do a B and E for their – they'll steal something (to sell). You see, in my community, I don't know, there's nothing there.**
>
> *Speaker, Battlefords Community Correctional Centre Dialogue, Sept. 18, 2002*

Parenting and the need for parenting programs was the subject that received the most frequent, passionate attention. Youth frequently identified their home life as being a contributing factor to their involvement in crime.

> **But anyway, I've talked to my family, my children, and I tell them, you know, that we have to learn how to be parents because that's one of the values and sacred gifts that was taken away from us through residential schools.**
>
> *Elder, Meeting with Elders, October 31, 2002*

Availability of mental health treatment was discussed. It was pointed out that the behaviour and coping methods of people with mental health issues who endanger themselves or others in the community is often being criminalized. Adequate mental health treatment is not available for those in correctional facilities. As well, waiting lists for public mental health services are exceedingly long.

The question of how to handle Fetal Alcohol Syndrome Disorder (FASD) was identified as requiring specific attention. There is no capacity to assess and diagnose FASD within correctional services or in the community, nor are there residential facilities to refer people to. The Commission heard that more money needs to be put into prevention through a public campaign dealing with this issue. A number of communities report successes, despite the lack of long-term or core funding, and support of their initiatives is warranted.

Service integration, the collaboration among departments and agencies, was identified by both community members and service providers as key to improving success in prevention programs.

A strong message in the northern Dialogues concerned the availability of resources for the North and the often-negative corresponding effects on communities. A desire for more investment in infrastructure to facilitate economic development and employment was voiced. Employment was seen to be a factor that would make a substantial and positive difference.

Preventing youth from entering the child welfare system, which was often linked to the justice system, was presented as a solution. Enhanced resources for early childhood intervention was recognized as a critical component for accomplishing this task. Provision of stable funding for prevention programs for families was identified as necessary many times throughout the Dialogues.

> **And why is it governments never ever run out of jail cells; they have no problem. There is no caps and budgetary fiscal realities when it comes to putting people in jail.**
>
> *Speaker, Presentation at Sask. Native Theatre, October 29, 2002*

There was considerable emphasis given to the value of recognition and reinforcement of culture, spirituality, traditions and language as preventative measures. The effect of residential schools on these factors was highlighted throughout the Dialogues. There appeared to be a general feeling that this is an underlying issue that needs to be addressed in order to move forward on other justice issues.

VICTIMIZATION AND VIOLENCE

> **When you deal with justice there are no doors to go to. You're all alone. You have to find the door yourself, you have to open the door yourself, you have to hold the door open for somebody else. It is too much to expect the people with the least resources, the least amount of self-confidence, the least amount of everything to have to go and do all of those things.**
>
> *Speaker, Victims and Violence Roundtable, Feb. 11, 2003*

The topic of victimization and violence consistently brought forward the need for additional funding for Victim Services programs. The programs that do exist have an increasing workload and some communities have no access to these programs at all. It was also suggested that Victim Services and its programs become more visible within communities. Requests were made for more First Nations and Métis resource officers to work with social workers and Victims Services. There are First Nations and Métis resource officers in seven communities but none are present north of La Ronge.

Counselling done in the victims' own communities was seen to be desirable and more effective.

Many advocated an integrated, inter-agency approach in this area. Successful results were reported by both clients and those working in the area where this approach has been taken.

However, privacy policies and legislation were cited as keeping agencies from sharing client information with each other and can interfere with collaboration. Inadequate communication amongst the different service providers was perceived as limiting support provided to victims.

Requests were made for service agencies to provide integrated programs designed specifically for women's needs. Expanding community programs to cover those hours not currently covered would better serve those whose crisis times are often in the evenings and on weekends. Areas identified as requiring more support for women were: parenting and respite; after-care services for women released from incarceration; mental health services; and basic needs, such as adequate housing.

The lack of any women's shelters in the North and the corresponding result of a woman and her children having to leave their home community for assistance were also pointed to in the Dialogues. Women and children are being sent south, away from families and supports that may exist for them in their community. As well, the North lacks any treatment centres, which was seen as detrimental to both individual and community healing.

In the Dialogues, the issue of domestic violence and its effect on families and the perpetuation of violence was raised. A zero-tolerance policy was advocated by some, while others felt such a policy is not helpful to restoring the family.

The extreme shortage of housing in many communities reduces the options possible for people living in abusive situations.

Because of its circumstances, the North has particular concerns with the domestic violence policy.

Remarks were made by men that when they come back to the community after incarceration there are no support services available to them. A request came for similar resources available to men in the South to be offered in the North to facilitate men to "be able to be fathers." Men also identified the difficulty in receiving relevant programming while incarcerated as a problem.

Creating a family court to handle family violence cases instead of having them heard in criminal court was an option presented.

Many participants maintained there needs to be greater understanding of the traditional and cultural roles of women and men. A return to these roles was identified as part of the solution to many issues challenging First Nations and Métis people today.

For program development to take place, Victims Services identified that there must be readiness and willingness on the part of the community to take responsibility for, and ownership of, the initiatives.

Adults and especially children involved in the sex trade were seen as particularly vulnerable.

The Canadian Race Relations Foundation made the suggestion that the Canadian government should immediately implement effective strategies and measures to address and prevent acts of violence against First Nations and Métis peoples, in particular First Nations and Métis women, both by police and civilians. The Foundation and the Institute for the Advancement of Aboriginal Women also suggested in a presentation to the Commission that full documentation, investigation and resolution of any unsolved murders and deaths be made. There are hundreds of First Nations and Métis women listed as missing in Canada and many murders of First Nations and Métis women are unsolved.

RESTORATIVE JUSTICE

> **In terms of values, the use of [an] adversarial approach to resolving differences in the justice system creates winners and losers. This approach clashes with the concepts of First Nations justice which emphasizes the restoration of social harmony in the community. Social harmony requires the building and maintaining of strong family and community relationships. The First Nations value system and cultural practices place far greater importance than mainstream society on collective goals, collective benefits and collective responsibilities. In terms of (restorative) justice, considerably more importance is placed on restoring relationships and community harmony than on punishment.**
>
> *Speaker, Indian Child & Family Services Presentation, October 24, 2002*

A significant theme found in the Dialogues was the need to address justice issues in a more holistic and cultural way. The lack of integrated services among government departments was identified as a significant problem for offenders and victims, as well as service providers.

Restorative justice initiatives such as mediation, sentencing circles and alternative measures were, for the most part, seen as being positive. However, more First Nations and Métis community involvement and direction of these initiatives, along with appropriate resourcing, could result in improvements. Healing lodges that holistically address the needs of entire families was a frequent suggestion. Northern communities often requested healing lodges in this context, as well as healing lodges for young offenders.

The ability for, and responsibility of, communities to more directly develop their capacity to support restorative justice, was presented as a critical need. The need for increased community funding and capacity was emphasized to put the principles of the new *Youth Criminal Justice Act* (YCJA) into effect.

Generally, communities indicated that if they were adequately resourced and effectively exercised a large degree of decision-making, they could be successful in developing their capacity to deal with issues such as crime prevention, alternative measures and reintegration. Again, there was concern that government is off-loading onto communities and that there are high expectations of volunteers. A suggestion was made that it may be necessary to legislate to secure resources in order to prevent the current uncertainty, inconsistency and gaps in and between programs.

The need for leadership within communities and the necessity of communities taking the initiative to effect change was repeatedly discussed. In every Dialogue there was some expression that leaders and communities themselves should act on their responsibility to their communities and to their children.

POLICING

Most of the Dialogues were held in RCMP serviced communities. The insular effect of smaller communities may have resulted in the RCMP being more likely to be under scrutiny.

Preference for community policing was referred to repeatedly as both as an example of success and as a suggestion. Many commented on the positive changes effected when officers became involved with the community. Community members asked that police officers be given more time to participate in community functions. To allow for this, as well as to avoid "burn out," it was suggested that the number of detachment officers be increased. It was also noted that co-ordinating local programs and services with the police would increase the awareness of the public and service providers of available resources in a community and be a more effective route to reaching the goals of that particular community.

> **… right now we're in the process of addressing community needs through this police board, and we're looking at providing better relations between the RCMP and community members, because traditionally when you saw a cop, an RCMP cop, you took off to hide from them.**
>
> *Speaker, Cowessess First Nation Community Dialogue, May 29, 2003*

There appeared to be a general lack of awareness and understanding of the existing police complaints processes. Often people indicated that the police had at times abused their authority. Civilian oversight of a complaints service was called for repeatedly. The Special Investigations Unit of the Federation of Saskatchewan Indian Nations was endorsed.

Racism and apathy on the part of police services were brought to the attention of the Commission in many of the Dialogues, especially in the context of personal experiences. Some people cited incidents of abuse by the police. The impression that police did not take a serious interest in the concerns of First Nations and Métis people was mentioned. Comments were often made regarding the difference in treatment First Nations and Métis people received in comparison with non-Aboriginals.

> **Then discretion is a huge factor in our involvement in the justice system, the police discretion. They have the right not to charge, they can make those decisions and they do every day, and I've seen it. And it's applied very negatively to our people. As well as judges' discretion and prosecutors' discretion. We have to look at that area and see what we can do to make things better.**
>
> *Speaker, MN-S Eastern Region Dialogue, Melfort, June 6, 2003*

Substantial emphasis was given to the need for police forces throughout the province to engage in effective cross-cultural training. This was particularly stressed in the North. The Commission heard from both RCMP and municipal forces that they do provide cross-cultural training. A common suggestion was that it would be beneficial for officers to be introduced to the culture and ways of their assigned communities before they took on their duties. Community Police or Police Management Boards were felt to be well placed to provide this orientation. A number of times, community members commented on the relative inexperience of many of the officers in northern communities.

Opinion varied with respect to how cross-cultural training should be implemented within municipal police forces and the RCMP. One position was that it be an internal process. Another was that it would be more effective to have someone from outside police services deliver such programming. Inclusion of First Nations and Métis history, Treaties and values is seen as valuable and has been recommended. As well, rather than exclusively delivering training in the classroom, it was advised some cross-cultural training be experiential.

Police response time was an area identified as requiring improvement. This was particularly evident in northern communities. Many expressed dissatisfaction that their calls were being relayed to the RCMP call centre in Regina. Differences in language, lack of understanding of local conditions and lengthy delays in local police responding to these calls were difficulties identified with the call system. Hiring local detachment support staff who speak the language was suggested as a way of assisting cross-cultural communications and improving police response time.

A stand-alone First Nations and Métis police force that could work in conjunction with current police services was another solution presented in the Dialogues.

Those working in programs such as alternative measures, women's shelters and Victims Services indicated that municipal police services could benefit from additional and ongoing training that has direct relevance to their clients' needs. One suggestion was to have service providers work regularly with the city police officers who are specifically assigned to sexual assault cases. Another area mentioned as needing development was consistency in conduct by officers within the police service.

Making the funding arrangements between Police Management Boards and Community Police Boards more comparable came up as a way of increasing their effectiveness. Often the two boards are handling situations and problems that are identical. However, while Police Management Boards on reserve are funded, Community Police Boards in Métis communities are run on a volunteer basis. The boards were seen as a positive development and their sustainment as vital to making community policing and community responsibility possible.

Throughout the Dialogues, dissatisfaction with police services was expressed. Still, the RCMP were often commended for the efforts they have made in communities and for being receptive to change in areas such as community policing, domestic violence training and willingness to work with other community services.

JUSTICE INSTITUTIONS

The opinion that First Nations and Métis people are a commodity within the justice system – which includes courts, probation services, police and other agencies – ran throughout the Community Dialogues. Some recommended more First Nations and Métis people in positions connected to the justice system as a step to effect change. Others thought that a First Nations and Métis presence would result in no meaningful difference.

> **The problem with including the Métis in the justice system, at whatever point it may be, police officer, court worker, et cetera, is the power to make decisions that make a difference. If a position is given and if that position does not have authority allocated in it, it is merely a token position.**
>
> *Speaker, Métis Nation, Denholm and Western Region 1A, April 14, 2003*

Concerns were raised about people's knowledge of the justice system and the procedures within it. Suggestions were made to introduce the justice system and surrounding concepts in elementary and/or high school, to include law classes in high school curriculum.

There are often greater expectations of court workers than they can possibly meet. A court worker's principal role is to explain the justice system to the accused. Generally, and particularly in the North, court workers perform roles beyond their actual responsibilities. It was suggested that increasing the number of court workers would make the workload more manageable.

Helping those who have been incarcerated fit back into their communities when released from custody was perceived as positive. However, there was a great deal of concern regarding many communities' lack of resources and personnel to facilitate reintegration. Communities articulated that more resources in terms of both dollars and personnel, as well as training, are needed to ensure successful reintegration.

Similar to the concerns regarding reintegration, communities strongly voiced the reality of the lack of funding and training available to allow for successful implementation of the *Youth Criminal Justice Act*. However, most were optimistic that given the appropriate resources, they could successfully carry out the principles expressed in the YCJA including those of victim, family and community participation; diversion and reduced custody; reparation of harm; and, offender accountability and rehabilitation.

Several communities expressed a desire to have a court on their reserve. There were comments that courts are intimidating and having their own court, in their own language, could be helpful in this regard. There seemed to be a general approval of the Cree language court and many communities showed an interest in acquiring a similar type of court. The serious issue of the availability of transportation to court, for the person charged with an offence, their family members and their support people, was raised. It was noted a number of times that many court facilities are in need of improvement, particularly in northern Saskatchewan.

A level of mistrust of lawyers generally, and specifically with Legal Aid lawyers, was found throughout all of the Dialogues. Dissatisfaction with the accessibility to, and the amount of time spent with, legal counsel appeared to be quite high. For example, people felt that they only had five minutes to spend with their lawyer before having their matter heard. This is not enough time to explain the circumstances of the alleged crime, let alone to determine a defence. There was an opinion that people often plead out to charges on either the advice of their lawyers or to "get it over with."

Some people believed that prosecutors have too much control regarding diversion decisions and that it is critical this authority be shared with the community. Communities identified the use of selective prosecutorial and police discretion as an area that could be improved upon and that should be scrutinized.

In the Dialogues, advice was given that judges and prosecutors continue to receive training in regards to First Nations and Métis cultures and communities. Often, community members expressed that it would be helpful for both judges and prosecutors to have an awareness of both the historical and current conditions faced in communities. A concern was voiced that judges may not be entirely unbiased.

Additionally, the Canadian *Criminal Code* directs sentencing judges to consider the unique systemic or background factors that may have played a part in bringing a First Nations and Métis offender before the court. The court is to be provided with case-specific information by counsel or in the pre-sentence report. It is apparent that a few minutes with a lawyer is inadequate for the accused to effectively communicate their story. Some suggestions communities offered were to have a full-time Legal Aid lawyer in the community, to hire more Legal Aid lawyers in order to increase the quality of service, and to encourage more First Nations and Métis young people to go into the legal profession.

People also expressed their concern that when the circuit court travels to their community, the judge, the prosecutor and the Legal Aid lawyer arrive together. The perception to some is that the case is decided before the accused has even told his or her story.

Breaches were identified quite often as a problem, particularly with youth. Generally, probation conditions were seen to be unrealistic and therefore setting the person up for certain failure, particularly as applied to youth. Many youth appeared to be serving more custodial time because of breach of conditions. However, a concern that terms were not strict enough and not properly enforced was also stated. There was general agreement that probation needs to include meaningful and positive follow-up. Again, integrating services and agencies that come into contact with these youth was mentioned as a solution.

Frustration was expressed with the length of time between the commission of the offence and actual sentencing. The sheer volume of individuals sitting in remand where no opportunity exists for programming or other activities was identified as a problem area.

Greater access to appropriate programming while incarcerated was suggested. Some pointed out there is greater availability of First Nations cultural programming as compared to Métis-specific programming. It was also noted that access to First Nations and Métis cultural teachings frequently became available only upon institutionalization. Women's programming was identified as an area where improvements could be made, especially in the area of availability.

Correctional workers were recognized as a group that would benefit from cultural training.

The development of alternative or "therapeutic" courts was brought up as a possible solution to perceived inadequacies in existing courts. There was a call for courts that are specialized, primarily domestic violence courts and addictions courts. This would allow for systems to work together to address the root causes of the criminal behaviour rather than sentencing an offender to jail without addressing his or her individual needs.

There was a distinct feeling in the Dialogues that there are two justice systems; one for First Nations and Métis people and one for non-Aboriginal.

Creating a separate justice system was identified as a possible solution to the existing problems.

However, the view of some people was that the justice system is starting to change, and there was specific mention of successes.

And when we think about the justice system there are things that are happening, sometimes you have to sit back and say thank you. Because when I go and do my hearings in court or the detachment, I'm given the opportunity to translate to these people what their charges are and, in turn, sometimes, hear them in their own language and then translate back to the RCMP. And I think it's because they trust me and I think – and I trust the system to some – to a great extent. And I have to say thank you for that.

Speaker, La Loche Community Dialogue, June 7, 2002

YOUTH

A central theme in the Dialogues was the hopes and concerns communities held for First Nations and Métis youth.

Responsibility for the protection and guidance of children by their parents and families was emphasized in every community visited by the Commission. Supporting positive parental involvement in the lives of children and youth was identified throughout the Dialogues as essential to crime prevention and early intervention. The relationship between parenting and its influence on youth was consistently remarked upon by youth, adults and Elders.

You know, when a child is born, when they first cry out … they're saying something …. What they say is "what I hold in my little hand is my future. I'm going to maintain that future, I'm going to protect that future." That's what you come in saying to this world. And that's another thing that we have to us adults, it's our responsibility to help and guide that child that brings our future.

Speaker, Elders meeting, Saskatoon, October 31, 2002

That youth often lack a safe place to go when a stable home is not available or upon release from custody was pointed out as an issue requiring attention. Individuals working with youth noted that with nowhere to go and difficulties in obtaining bare necessities, the probability of the occurrence of negative behaviours that can lead to contact with the justice system increases.

First Nations and Métis youth were seen to be at a disadvantage in the court system. It was noted many young First Nations and Métis do not have support persons present in court. This can make it difficult to prepare a plan to present to the judge, which can, in turn, result in a term of incarceration. The use of pre-trial diversion was perceived as more likely for non-Aboriginal youth.

A desire to deal with youth in the community was often expressed. However, it was pointed out that it can be easier in some ways to incarcerate rather than do all of the enveloping and supporting that a community has to do in order to have the really troubled, sometimes violent, young people stay in their community. Again, provision of adequate resources was identified as necessary to either prevent incarceration or facilitate the reintegration of youth.

Many people were distressed with the effect of addictions on youth. Requests were frequently made for healing and treatment centres; this was especially underscored in the North. Many times it was suggested that involving the entire family unit, not just the youth, in healing processes would result in intervention with the potential for long-term success.

> **… the root of the problem in the justice system, alcohol and drug abuse. Those abuses do happen in our communities. These are just some of the symptoms of the socio-economic realities of the region. And we need to provide education to youth on what the damaging effects of alcohol and drugs are, that it's not just a person's own physical biology that is being damaged, it's families and communities as a whole that are being damaged.**
>
> *Speaker, Beauval Community Dialogue, June 6, 2002*

The marginalization of First Nations and Métis youth in society was seen as a critical issue. A youth worker described her experience with the results of marginalization:

> **They grow up and they give up. They just give up. They figure that, well, this is my life and nobody cares about me and they just – they start really getting – almost like they get depressed or something, and they just don't feel like they have any hope and they just – drift away.**

Role modelling and mentorship were identified as essential to the success of youth. People often remarked on the positive difference in outcome that comes from having an interested and supportive person involved in a young person's life. Having someone to listen, to provide a sense of security and to set boundaries is critical in the development of young people. When there is a lack of hope, the despair that follows often leads to criminal behaviour.

Young people and youth workers commented on schools and their potential to impact either positively or negatively on youth. Some saw racism as playing a significant role in youth dropping out of school, limiting their opportunities to gain the education needed to participate in the provincial labour force. Many believed that school suspensions were not helpful and were counter-productive to the prevention of negative behaviours. Youth often said they would advise others to stay in school. Education was perceived to be key to the success of young people.

Youth observed that their active involvement with the development of programs results in participation and success.

Quite often in the Dialogues, re-establishing First Nations and Métis cultural traditions was offered as part of the solution to youth contact with the justice system. Taking opportunities traditionally used for counselling young people, such as contact with Elders at round dances, was provided as an example. Encouraging and providing opportunities for youth to become familiar with cultural activities and ceremonies, First Nations and Métis languages, and traditional conceptions of the roles of males, females and youth was advised. Youth themselves commented favourably on cultural programming provided in schools or in custody.

The topic of gangs most often was raised in terms of a youth issue. While some believed that gangs are a pressing problem, others felt this issue is being overblown. There was concern that the term "gang" has a connotation more severe than that which would apply to some of these groups, which are not very well organized.

People consistently felt that the reasons for joining gangs are a lack of supportive family and the desire to acquire a sense of belonging. Gang membership can also provide a means for gaining money. There was also an indication that there is pressure on inmates to join gangs for safety reasons while in correctional facilities.

The use of Elders in gang prevention, though recognized to be taxing, was advised. Statements were made that preliminary indications are that the use of Elders is well worth the time and effort. The FSIN proposed that First Nations take a lead role in developing capacity at the community level to deal with the issue of gangs. Proactive and preventative programs were suggested rather than trying to "gang bust." Co-ordination between all agencies was also identified as being an important element for success.

Lessons Learned: The Legacy of the Royal Commission on Aboriginal People

The Commissioners are aware of the fact that information heard in the Dialogues and the presentations bears a marked similarity to the information heard by many other Commissions in the past. This pattern has not escaped the attention of either the participants or the Commissioners; many people have said, "don't just study us again." This Commission sees that the implementation of the recommendations from the Royal Commission on Aboriginal Peoples (RCAP) plays a significant role in the development of a First Nations and Métis voice in the Canadian profile.

We must work together on issues surrounding the lives of First Nations and Métis people that include all aspects of First Nations and Métis peoples' experience. This is absolutely the key. We must start with inclusion of First Nations and Métis people in the decision-making process. RCAP recommends various avenues for developing this process. The basis of the conclusions of the RCAP is formulated entirely on a renewed relationship between Canadians and First Nations and Métis people. This relationship is to be based on four governing principles:

- **Recognition**
- **Respect**
- **Sharing**
- **Responsibility**

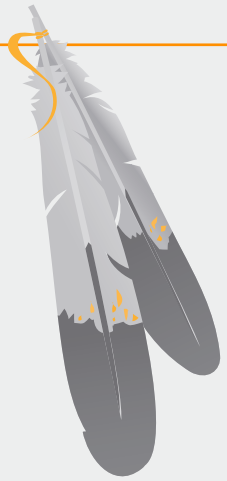
The RCAP formulates a new relationship between the federal, provincial, territorial and First Nations and Métis governments and then looks at a number of key areas under which the relationship should be developed in order to make it a strong and viable one. The fact that there is not one answer is obvious, and therefore the development of a process to deal with the issues on many fronts was and is necessary. With that in mind, the RCAP undertook an examination of the political and economic development of First Nations and Métis people to build a new relationship on a solid foundation. At the same time, the strengthening of the social fabric through employment and education, building family, housing, arts and culture was put forward through very specific recommendations. These included a range of perspectives or voices including those of women, youth, Elders, northern, urban, and Métis. We believe this is an approach that is inclusive, respectful, holistic and positive.

The actual implementation of any recommendations for Commissions is another issue that is raised by the general public and one that Commissions face regularly. Political will is often raised as a barrier, as well as the ever-common issue of resources and relinquishment of power and decision-making. Also, the issues of how recommendations have been implemented and how they are evaluated as they evolve and who evaluates them are concerns.

The RCAP clearly had a vision of a venture that involved all Canadians, First Nations and Métis and non-Aboriginal alike. This vision asked the leaders of all levels of government, First Nations and Métis and non-Aboriginal, to take on responsibility through respect, sharing and recognition. With this in mind, the Commission would like to hear back from our partners as to what, if any, recommendations from the RCAP have been acted on and the current status of those actions. If there are barriers to implementation that were not foreseeable at the time of the writing of the report, those items should be raised so they can be adequately addressed.

Recommendation 3.1

It is recommended that the Government of Canada, the Government of Saskatchewan, Federation of Saskatchewan Indian Nations and Métis Nation of Saskatchewan respond to the Justice Reform Commission by December 15, 2003 with the actions taken in response to the recommendations of the Royal Commission on Aboriginal People.



Report on recommendations contained in January 2003 interim report

BACKGROUND

In its January 2003 interim report, the Commission on First Nations and Métis Peoples and Justice Reform submitted several recommendations. The Commission has received encouraging responses from the government departments and organizations that are directly affected by these recommendations.

CITIZEN COMPLAINTS AGAINST POLICE

Recommendation 2.1

That the recommendation contained in the Linn Reports asking for a citizens' complaint review mechanism be implemented.

The Minister of Justice has acknowledged that many First Nations and Métis people are uncomfortable dealing with complaints against police through the existing channels. Saskatchewan Justice indicates that it is committed to working with the Justice Reform Commission, the Federation of Saskatchewan Indian Nations (FSIN), the Métis Nation of Saskatchewan (MN-S), police and the community to deliver improvements in this area.

Analysis

The Commission anticipates the identification, by March 31, 2004, of a long-term, permanent solution that will address the concerns First Nations and Métis people have regarding the handling of complaints involving police officers and police organizations.

Recommendation 2.2

In the interim, that funding for the Special Investigation Unit (SIU) be provided to ensure it is able to continue its work on behalf of First Nations and Métis people.

This recommendation was supported by Sask Justice. The department commented that the SIU provides a valuable service in receiving complaints, supporting complainants and referring complaints to the appropriate police service or organizations for action. The Province has been providing $75,000 per year to the SIU. This funding supports the salary and travel expenses of one investigator, as well as some administrative support for the position.

The Province has indicated that it plans to continue to provide interim support for the SIU with discussions regarding future funding levels currently underway. The Special Investigation Unit of the FSIN has indicated that the support of the Justice Reform Commission has been beneficial in terms of encouraging the Province to increase funding for the SIU.

Analysis

The SIU provides a valuable service. However, there is a need for the creation of an agency that is independent and has permanent funding.

THE *YOUTH CRIMINAL JUSTICE ACT*

Background

On April 1, 2003, the *Young Offenders Act* (1984) was replaced with the *Youth Criminal Justice Act* (YCJA). The federal government was motivated to make legislative changes due to a number of factors, including the fact that Canada puts more youth in jail than any other country in the Western world. Saskatchewan incarcerates more youth on a per capita basis than any other province in Canada.

The Justice Reform Commission viewed the new legislation as representing opportunities and challenges and presented five recommendations prior to the implementation of the legislation on April 1, 2003.

Recommendation 2.3

That Saskatchewan government, First Nations, the Métis Nation and the police work together to create a set of guidelines for the use of police and Crown discretion that ensures that First Nations and Métis youth will be diverted into culturally appropriate programs or services.

The Minister of Justice and the Minister of Corrections and Public Safety have indicated that they fully endorse the development and implementation of culturally appropriate services throughout the criminal justice system.

The departments note that expanding the use of alternative measures can be limited by the capacity of community agencies, rather than by prosecutorial discretion or referral guidelines. They are currently working with community-based justice agencies, Tribal Councils and alternative measures programs to increase the number of referrals.

The Federation of Saskatchewan Indian Nations agreed it was important for First Nations to be part of a team approach to divert youth into culturally appropriate programs. However, it noted that this recommendation does not address the need for funding within the communities to provide those programs, or any consideration for justice staff who are severely overworked and lack sufficient resources.

The Commission understands that the YCJA places emphasis on extra-judicial and non-custodial measures to appropriately respond to youth, keeping them out of the formal justice system. The success of the YCJA is extremely vulnerable from a number of perspectives. One is the use of extra-judicial measures. The use of these measures is based on police and prosecutors exercising discretion and considering extra-judicial measures first. The existence of extra-judicial and non-custodial measures does depend on the government approving and funding such programs. However, the success of these measures or programs depends on the active co-operation of the police and prosecutors. The willingness of individual police officers, prosecutors and judges to use alternatives will be critical. This requires changes in how the system operates. Changes are vulnerable to the extent that they depend on adequately resourced programs, bias and knowledge of the individuals. It is believed that the creation of guidelines will assist individual police and prosecutors to become "*Champions for Change*."

Recommendation 2.4

That the Government of Saskatchewan maintain the age of presumption at 16.

Saskatchewan Justice points out that the presumptive age under the YCJA relates to sentencing. Unlike the *Young Offenders Act*, in which there could be an application for youths to be tried in adult court, all youths will be tried in youth court under the provisions of the YCJA. The YCJA sets the presumptive age at 14 but allows the provinces the option of setting the age at between 14 and 16. The Government of Saskatchewan decided to retain the legislated age at 16. The Province has taken the position that this legislative change will have minimal impact on the sentencing practices of the courts. In the past decade, there was only one case where the court sentenced a youth under 16 to an adult sentence.

The Commission recognizes that the number of youth that may be affected by this decision is few. However, the YCJA changed the way adult sentences are imposed on youth. The YCJA contains new provisions stating that youth convicted of a presumptive offense, murder, attempted murder, manslaughter, aggravated sexual assault or a third serious violent offense be presumed to receive an adult sentence unless the young person demonstrates that an adult sentence should not be imposed. The Quebec Court of Appeal has recently decided that this presumption violates the *Canadian Charter of Rights and Freedoms*. As a result of this court decision the federal minister of justice has indicated that these presumptive provisions are under review. It is the Commission's understanding that prosecutors are currently not relying on these presumptions. This is an issue that will need to be closely monitored in the future.

By choosing to set the transfer age at 16, the Commission is concerned that a new category of youth offender may be created regardless of the number of youth affected. Also, the Commission has heard support for a youth justice system that is based in healing and restorative justice, not retribution. The adoption of the lower age of presumption does not appear to be in keeping with the spirit and intent of the new Act, or in keeping with the principles of restorative justice.

Recommendation 2.5

That clear and enforceable standards with regard to safe, fair and humane custody, as well as rehabilitation and reintegration, be adhered to and that an independent body be established to create the standards and monitor compliance. That body must include First Nations and Métis representatives.

The Department of Corrections and Public Safety (CPS) agreed that custody must be safe. CPS referred to the Children's Advocate 2002 Annual Report that stated "there have been significant changes and improvements to the facilities, policies and to programs provided in the past."

The Commission notes that Children's Advocate Office has repeatedly recommended the establishment of minimum standards of care for all custody facilities operated by government and determines that these are still areas requiring improvement especially in regard to monitoring compliance. The FSIN believes more could be done in this area.

Recommendation 2.6

That First Nations, Métis and the Saskatchewan government work together to develop a public education strategy to ensure greater knowledge and understanding of the YCJA.

The Ministers of Saskatchewan Justice and Corrections and Public Safety stated their support for this recommendation, adding that First Nations and Métis peoples must be involved in plans to implement and deliver the YCJA. The government is working with First Nations and Métis organizations to provide training for the staff of community-based organizations, as well as police, Crown prosecutors, First Nations and Métis court workers and other officials within government or the criminal justice system who will be directly involved in implementing the legislation. The FSIN suggested more energy should be devoted to a reintegration strategy, case conferencing and crime prevention.

Recommendation 2.7

That the deputy minister's steering committee on YCJA is expanded to include First Nations and Métis representation. This body needs to conduct a detailed analysis of the YCJA to highlight the potential opportunities and the concerns the legislation has for the program and service deliverers, the courts, the communities, and the youth. They must continually monitor and evaluate the implementation of the YCJA.

The FSIN praised this recommendation, noting it places First Nations people in a better position to influence decision-making, which includes policy and funding decisions. The Province has stated that in accordance with this recommendation, it will facilitate meetings involving deputy ministers and representatives from the FSIN and the MN-S.

Analysis

These recommendations, it must be noted, were presented prior to the YCJA coming into effect. Now, several months later, there is still much work needed in understanding the implications of this new legislation. Therefore, it is encouraging that the lines of communication appear to be open and leaders in all areas of government are committed to working together to realize the benefits of the YCJA.

The government is also moving forward in involving First Nations and Métis people in high-level policy discussions. On March 18, 2003, the government and the FSIN signed a Bilateral Protocol to create a formal process for consultations between the Premier, Cabinet Ministers and senior provincial officials with the Chief, Vice-Chiefs and officials of the FSIN. This structured forum must, for example, allow for discussions on justice to take place at three levels: between the Premier and the Chief of the FSIN, between Ministers and Vice-Chiefs, and between senior officials. There is a similar existing protocol between the Province and the MN-S.

RECOMMENDATION REGARDING THE REGINA CORRECTIONAL CENTRE

Background

The segregation portion of the Regina Correctional Centre raises serious questions about the treatment of human beings in this jail. Inmates in this section are confined to their cells for twenty-three-and-a-half hours a day.

The overwhelming majority of inmates currently being housed in these deplorable conditions are First Nations and Métis men. The original section of the Regina Correctional Centre, which includes the Segregation Unit (East G wing) and the Secure Unit (West G wing), was constructed in 1913. The age and design of the building creates inhumane conditions, which are worsened by the amount of time that inmates in these units are confined to their cells.

Recommendation 2.8

That the segregation units of the Regina Correctional Centre, known as East G and West G, be closed immediately.

The Minister of Corrections and Public Safety informed the Commission on March 25, 2003, that his department is proceeding with work that will relocate the segregation function of East G to another Unit. However, due to the demand for cell spaces at the Centre, the Minister stated that East G will continue to be used for short-term offenders. West G is used primarily for federal offenders awaiting transfer to a penitentiary or an appeal hearing, typically for less than 30 days.

The Minister of Corrections and Public Safety stated that the department is continuing to work on the replacement of the entire centre block of the Regina Correctional Centre.

Analysis

The Commissioners are disappointed that a more comprehensive and satisfactory strategy has not been forthcoming. The Justice Reform Commission continues to express its outrage with the conditions in this particular section of the jail and urges the Province to expedite a plan to correct this injustice.

Restorative Justice in the Courts:

Creating Opportunity

INTRODUCTION

The Commission has heard that, in many cases, the court system is being used, by default, to respond to social problems. This dependence on the court system has existed over a long period of time. A result of this dependence has focused resources on providing more courts, more prosecutors, more police and more Legal Aid lawyers. While the Commission has heard and seen a desperate need for more resources in these areas, the Commission recognizes that priority must be given to making space for an alternative approach to dealing with the majority of matters which are now being brought to court:

> **The other thing that I observe is that there's a lot of garbage that comes to the Court. A lot of behaviour is criminalized. People are charged when they should be diverted from the Court system …**
>
> **… I think justice is better served when you have a victim and offender sitting down and solving their differences …**
>
> **… I think when people accept responsibility for their behaviours and recognize that there's a problem, and set about to heal that, or heal yourself, I think it works.**
>
> *Speaker at the Meadow Lake Dialogue, June 5, 2002*

In many instances, relying on the court system instead of resolving disputes creates a spiral effect that can contribute to further social and economic problems:

> **… once the court system has dealt with you, you carry that record with you wherever you go, and people do a criminal check on you. Even though you could be the best applicant for the position that's advertised, you could be denied because of your background.**
>
> *Speaker at the presentation by the*
> *Prince Albert Grand Council Justice Commission, June 25, 2003*

The Commission believes that the present court system with its emphasis on addressing punishment and deterrence fails, in many cases, to address the underlying causes of inappropriate behaviour. While the Commission recognizes the need for sanctions such as those provided by the present court system, the Commission endorses the use of the principles of restorative justice. The philosophy of restorative justice is compatible with what the Commission was told about First Nations and Métis justice in the Dialogues. Judge Murray Sinclair provides this description in Bridging the Cultural Divide, RCAP, 1995:

Restorative Justice in the Courts: Creating Opportunity (continued)

> **The primary meaning of "justice" in an Aboriginal society would be that of restoring peace and equilibrium to the community through reconciling the accused with his or her own conscience and with the individual or family that is wronged. This is a fundamental difference. It is a difference that significantly challenges the appropriateness of many of the ways in which the present legal systems deal with Aboriginal people in the resolution of their conflicts; in the reconciliation of the accused with their communities and in maintaining community harmony and good order.**

A restorative, community approach that is integrated with the present legal system is particularly evident in some First Nations and Métis communities, where the concepts of peacemaking and achieving balance are integral to First Nations and Métis traditions. In these communities, the effort is to regain community justice, as opposed to initiating community justice. Restorative justice has taken root in non-Aboriginal communities as well, a reflection of the community values of taking responsibility and making amends for harm done.

Such integrated community justice initiatives are contemplated in both the *Criminal Code* and the *Youth Criminal Justice Act*. Section 717 of the *Criminal Code* of Canada states that alternative measures may be used to deal with a person alleged to have committed a criminal offence if certain broad prerequisites to the use of alternative measures have been satisfied. Also, Section 4 of the *Youth Criminal Justice Act* states as part of the declaration of principles that extra-judicial measures are often the most appropriate and effective way to address youth crime. Both of these pieces of legislation provide the mechanism for charges to be diverted away from the courts into a restorative justice, community-based alternative. What are needed are the resources to allow communities to build capacity and respond to the needs of their members.

Saskatchewan Justice, in co-operation with a number of agencies and communities, has utilized the alternative measures provisions of the *Criminal Code* of Canada as a vehicle to deliver restorative justice to individuals and communities:

> **In terms of adult alternative measures more generally, Saskatchewan is the only jurisdiction in Canada with a comprehensive provincial alternative measures program. In 2000-2001 there were 2,770 adult referrals. The program is offered in 21 communities. There are 52 caseworkers, and Aboriginal people accounted for 42 per cent of these cases. In terms of youth, we have programs operating in 14 communities. We have partnerships with five tribal councils, five Aboriginal agencies, four community agencies and three government offices. Services are provided in remote and rural northern communities through fee-for-service arrangements. Saskatchewan is diverting a large number of youth out of the courts and into alternative measures programs.**

These programs provide an opportunity for offending youth to acknowledge and repair harm to victims in communities outside the Court system. In 2000-2001 there were 2,911 youth referred to these programs and Saskatchewan has the highest rate of youth participation in alternative measures in Canada. We have some evidence, of course, that these programs are working. More than eight in ten youth and adults (involved in the process) resulted in agreements, and 9 in 10 of these agreements are successfully fulfilled. And the availability of these programs in alternative measures has led to a decrease in the number of youth who are receiving other community sentences.

Speaker at Presentation by the Department of Justice & the Department of Corrections and Public Safety, January 15, 2003

Restorative justice must, by its very nature, be community driven and the particulars of any restorative justice process will depend on individual communities.

Community-based agencies that offer alternative measures report that the number of partnerships is on the rise and communities are becoming more involved. We are examining new ways to apply restorative justice approaches in our internal practices and custody facilities and after offenders have been sentenced and released from custody. We feel the issue of alternative measures has lots of room for expansion in Saskatchewan.

Speaker at the Presentation by the Department of Justice & the Department of Corrections and Public Safety, January 15, 2003

Dr. Les Samuelson, in his evaluation report of the Saskatchewan Aboriginal Justice Strategy for Saskatchewan Justice, highlights the need for this shift in emphasis:

… it is important that Justice continues moving forward in the four main areas of activity: crime prevention and reduction, building bridges through community-based justice, employment equity and race relations, and development of self-determination and self-government. Although progress has been made to some extent in each area, a shift in emphasis may be required to ensure equal success in each area of activity.

The Commission believes there must be a shift in emphasis to trigger a greater reliance on restorative justice programs in communities and to ensure that they are properly funded in order to facilitate their success.

A number of community justice initiatives and plans for justice initiatives have been examined and the specific features of each are outlined below.

INTEGRATED JUSTICE INITIATIVES: COURTS AND COMMUNITY WORKING IN PARTNERSHIP

There are many examples where the principles of restorative justice are being utilized by the courts to resolve disputes in communities. It is not the intention of this report to attempt to detail every one of these initiatives, but rather to highlight instances where a partnership has successfully been created between the courts and the community.

Treaty Four Integrated Justice Initiative

The Treaty Four Alliance, involving 34 First Nations in Treaty Four Territory, has taken a governance and justice reform approach to their community justice initiatives. Their goal is rebuilding the justice system within their communities for the benefit of their people; this is driven by the need they see for many changes to the justice system.

The Treaty Four perspective is that to really control the First Nations justice system within communities and the groups of First Nations, there needs to be the power and authority within First Nations to develop their own constitutions, laws and policy frameworks. The Treaty Four Governance Institute develops generic models of First Nations constitutions, laws and policy frameworks, as well as providing professional advisor services on laws and policy development, and coordinating special governance projects. A project at the Treaty Four Governance Institute, mandated by the Chiefs, is to work closely with the Tribal Council and First Nations communities, to develop a Treaty Four-wide justice system. The intent is the re-awakening of traditional values, and a rebuilding of First Nations processes and procedures, including re-establishing conflict resolution methods.

> **It's simply not good enough to develop the justice capacity in our First Nations in order to enforce provincial or federal laws. It has to be developed with the intent of enforcing our First Nations laws, and if we chose to accept the provincial and federal (laws) in certain cases, then that is also within our authorities.**
>
> *Presenter at Treaty Four Dialogue, Sept. 11, 2002*

One of the major institutions currently being developed is Alternative Dispute Resolution (ADR) processes. It provides a mechanism whereby First Nations resolve community disputes. The intent is to create a capacity to settle disputes internally – including everything from mediation right up to tribal court – to handle criminal matters in the future.

Extensive mediations are being done by tribal council justice co-ordinators and there are many community programs available. People are being trained in mediation, drawing upon peacemaking traditions of First Nations communities; people are also being trained in adjudication. Mediations, community justice forums, youth circles, healing circles, talking circles and sentencing circles all take place in Treaty Four communities and community-based justice committees are also in place.

Beardy's and Okemasis First Nation

Beardy's and Okemasis First Nation has made many strides in involving the community in justice processes and enhancing accessibility to the justice system. The first circle project was held in l996, and now they have two members who do circles and are available whenever requested. Sentencing circles involve the judge, the Crown, legal counsel and the RCMP, and it is left to the community to recommend the type of sentence that should be served within the community. The offender has to apply for this process through the courts, and then the community meets and decides whether this is an appropriate case, based on the individual's record. The judge is supportive of their decision.

An inter-agency Board is being resurrected and a Police Management Board provides community input into a RCMP detachment with two officers, which is located on the Beardy's First Nation. Court on the reserve is seen as a big advantage in providing fairness and equity, and probation on the reserve is also advantageous because otherwise, people would have to travel to Saskatoon or Prince Albert, which is costly.

In Community Assisted Parole Hearings, the offender, victim, community members and Elders are included. Three such hearings have been held and were successful. Up to 60 people participated in each hearing.

Tsuu T'ina Courts

This Court was established on the Tsuu T'ina Reserve in an agreement signed by the Alberta provincial government and Canada on October 15, 1999, and is presided over by the Honourable L.S. Tony Mandamin, a Judge of the Provincial Court of Alberta.

The emphasis of this court is to make peacekeeping an integral part of the court process. The purpose of the peacemaking circles is to resolve conflict, heal the offender and the victim, and restore relationships. The court is set up as a circle and uses protocols that reflect the Tsuu T'ina traditions, and the peacemaking process always involves an Elder for guidance and direction. The Elders of the Tsuu T'ina Reserve have decided that all offences are eligible for peacemaking except homicide and sexual assault.

The court starts with a smudge, a traditional burning of sage or sweetgrass signifying a prayer for guidance. A Tsuu T'ina peacemaker is present. If a person charged with an offence is willing to enter into peacemaking, rather than have the matter remain in court, the charge is adjourned so that the Peacemaker Co-ordinator can assess the case and decide whether to proceed with peacemaking. If the offender refuses to co-operate with the peacemaking process, the matter will be returned to the court. The victim of the offence must also agree to participate in the peacemaking process.

If a charge is accepted for peacemaking, the co-ordinator assigns a Community Peacemaker. The Peacemaker is then responsible for the process and he or she recruits members of the reserve. When the peacemaking process is completed, the individual signs an agreement to complete the undertakings to which they have agreed in the peacemaking circle. Once this individual completes these undertakings, a final peacemaking circle is held where a ceremony takes place celebrating the completion.

The matter is then returned to His Honour Judge Mandamin in court, where the Peacemaking Co-ordinator reports on what has been completed. The Crown Prosecutor assesses what has been done, and if satisfied, the charge is withdrawn.

Manitoba Keewatinowi Okimakanak (MKO) Project

The MKO/First Nations Justice Strategy was designed as a pilot project involving 10 First Nations communities in northern Manitoba. The project is a tripartite initiative of the Manitoba Keewatinowi Okimakanak and the governments of Manitoba and Canada. The goals of the project are to make justice more relevant to First Nations people and to begin the process of healing in these communities.

The MKO Project introduced the use of a Magistrate's Court. This court is presided over by an Aboriginal Magistrate who addresses the individuals who appear before him/her in their own language. The magistrate is able to deal effectively with less serious criminal charges and proceed to impose sentence. The Magistrate's Court has the ability to deal with all matters that come before it in one of four ways: 1) refer to the community; 2) guilty plea (where the magistrate has jurisdiction); 3) adjourn to the Provincial Judge's Court for a guilty plea (where the magistrate does not have jurisdiction); 4) set trial date. The objective of the MKO Project is to create a greater focus on cultural issues in the courts, together with a community-based response to crime, which results in a reduced delay in the court and a working partnership between all levels of government.

A Community Justice Worker co-ordinates and develops community alternatives for people appearing before the Magistrate's Court with the emphasis being on healing the wrong between the offender, the community and the victim. An evaluation of the MKO Project after its first year of operation reported an 88 per cent success rate of completed and ongoing involvement of offenders.

The use of the Magistrate's Court has resulted in a significant reduction in resources needed by the Provincial Court and in the workload experienced in the Provincial Court in northern Manitoba.

The Yukon Justice Panel

The Yukon Justice Panel is co-ordinated by an employee of Health and Social Services in the Yukon. It currently consists of representatives from a number of agencies, including Crown Counsel, Defence Counsel, Youth Probation, Victim Services, Diversion Committee, RCMP Representative, First Nation Court Worker and a Youth Representative. The objectives of this Panel are to increase referrals to extra-judicial measures, reduce delays in Youth Court, shorten remand time, build better partnerships among Youth Justice officials, and enhance the capacity of family and community to share responsibility. The Panel began reviewing cases in March 2001.

When a young person is charged with an offence, disclosure of the evidence underpinning that offence is made available to the Youth Justice Panel. The Panel reviews this disclosure each week before court in an attempt to identify potential candidates. The decision to divert to extra-judicial measures is usually reached by consensus of the Panel. If the matter is recommended for extra-judicial measures, the case is adjourned for a three-month period. If the extra-judicial measures are successfully completed, a stay of proceedings is entered on the court record.

Initial results of this Panel are promising. In a period between March 31, 2001 to May 31, 2002, 63 per cent of all youth were diverted from youth court post-charge.

This Youth Panel allows for co-ordination of the entire justice system with a clear mandate to keep youth out of jail, except in extraordinary circumstances. It provides for a significant reduction in the costs of processing offences, and provides a broad range of diversion alternatives. It also involves the community through the Youth Justice Panel at the initial stages of a youth's introduction to court.

THERAPEUTIC COURTS

North Battleford Domestic Violence Treatment Option Court

Her Honour Judge Violet Meekma, a Judge of the Provincial Court for Saskatchewan, initiated this Court. It commenced on April 10, 2003. The Judges of the Provincial Court in North Battleford have designated a special docket court at the North Battleford Court House. All cases of domestic violence are sent to this court for a first appearance.

If the person charged with the offence agrees, he or she is immediately referred to either the Alternatives to Violence Program at the local mental health centre, or the Anger Management Program at Kanaweyimik Child and Family Services. If it is necessary to address substance abuse issues, they are dealt with first. The court continues to monitor the progress of the offender until the program is completed. If the program is successfully completed, the offender is sentenced in domestic violence court, in most cases, to a discharge or period of probation.

This court allows for the option of immediate rehabilitative intervention for the offender, if he or she accepts responsibility. The long-term goal of this integrated approach is to reduce domestic violence through the rehabilitation of the offender.

Drug Treatment Court

The Government of Canada has supported drug treatment courts in both Toronto and Vancouver. These drug treatment courts are similar in process to that being utilized by the Provincial Court for Saskatchewan in the domestic violence courts.

Individuals who plead guilty to a drug offence, and who agree to participate in a drug treatment program will be diverted to such a program. Their progress in treatment is monitored by the drug treatment court for approximately a year, and if they establish an ability to control their addiction, a stay of proceedings will be entered, or the offender will receive a non-custodial sentence.

On May 29, 2003 the federal government committed $23 million over five years to expand the drug treatment court program across Canada.

This therapeutic type of court could also address those whose addictions to drugs and alcohol, or mental disabilities such as Fetal Alcohol Spectrum Disorder are underlying issues in their involvement with the justice system.

Gladue Court

Gladue Court in Toronto was set up in October 2001 to handle criminal charges against First Nations and Métis people living in the downtown area. This court was the eventual response to an amendment made in 1996 to the *Criminal Code* of Canada (718.2 (e)) that states:

"718.2 A court that imposes a sentence shall also take into consideration the following principles: (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders."

Subsequently, in 1999, the Supreme Court released its decision (in R v. Gladue [1999] 1 S.C.R. 688) that the amendments call for changes to the sentencing process, to look at the circumstances of each offender and the circumstances around the offence with which he/she is charged. The Supreme Court further expressed concern that Canada sentences more people to jail per capita than all but one or two other countries in the western world and that has the greatest impact on First Nations and Métis people.

Gladue Court is an alternative that may be chosen by any accused First Nations and Métis person. An Aboriginal caseworker is available to gather information about a client, and is knowledgeable about the appropriate services that clients may be referred to in the community. This information is presented in a report to the Court for consideration in sentencing. The benefits are that the Court sentences provide the opportunity for underlying issues to be addressed, rather than subscribing to the revolving door syndrome.

The Gladue Court is appropriately located because it is estimated that there are between 70,000 and 100,000 First Nations and Métis people living in the area, and because there are many services available. However, because it sits only 1.5 days per week, it cannot handle trials, and the lack of female holding cells limits most First Nations and Métis women in custody to other regular courts.

PROPOSED MODELS FOR CHANGE

Meadow Lake Tribal Council Justice Plan

The Meadow Lake Tribal Council, consisting of nine First Nations, has a comprehensive justice plan that contemplates the establishment of new, community-based capacities and programs to meet the needs and priorities of communities in a culturally sensitive manner. It is envisaged that each community would have a Community Justice Committee that would be overseen by the Meadow Lake Tribal Council Justice Commission and the Justice Co-ordinator.

The initial focus of the plan is to ensure the required framework is in place. The intention of their justice plan is not to establish completely separate justice systems but instead, systems which are fundamentally related to, and in co-operation with, the existing federal/provincial system. They see their programs rooted in the community and its values.

The House of Justice

The House of Justice has, as its institutional framework, Community Justice Committees, Resident Peacemakers/Justices of the Peace, an Alternatives Forum and the Provincial Court of Saskatchewan. The House of Justice emphasizes that there must be transparency, accountability and credibility to any community-based justice system. The House of Justice proposal is recommended to apply to all of Saskatchewan, and it maintains as its basis that justice should be viewed in a holistic manner and that any system of justice must be universal in its application so that every citizen of Saskatchewan can be confident of equal standards and processes in whatever community the court is located. In the House of Justice model, a resident Justice of the Peace would be the link between the community and the court. However, the Alternatives Forum would be presided over by a Provincial Court judge.

The House of Justice proposal also contemplates judges with a dual appointment to the Provincial Court of Saskatchewan and the Queen's Bench for Saskatchewan, sitting in northern remote communities in order to better serve northern citizens in both family law and criminal matters. The intent of the proposal is for communities to be more involved in responsibility for their communities.

Prince Albert Grand Council Proposal

The Prince Albert Grand Council is comprised of 12 First Nations and 26 communities. The Prince Albert Grand Council has a population estimated to be 30,000, which is more than one-third of the First Nations population in Saskatchewan.

The proposal contemplates a Magistrate's Court. The magistrate would speak the First Nations language of the community in which he or she presides. The PAGC proposal is recommending a demonstration project for the communities of Pelican Narrows and Black Lake. The magistrate would be brought in from a neighbouring community in order to avoid the perception of any bias or partiality.

The Magistrate's Court under the Prince Albert Grand Council proposal would be the court of first instance for all Summary Conviction and hybrid offences. This court would determine whether alternative measures were appropriate, and if so, refer the matter to a Community Justice Committee made up of various representatives from the community. This proposal recognizes the concern surrounding Fetal Alcohol Spectrum Disorder and incorporates a response to this disorder through early intervention by the community.

It is also contemplated that the Magistrate's Court would have the authority to take guilty pleas and impose sentence where a sentence of incarceration is not anticipated.

The Prince Albert Grand Council recognizes in their proposal the valuable contribution of the Cree Court and the efforts of His Honour Judge Gerald Morin. Given the success of the Cree language court in building on community justice initiatives, the Prince Albert Grand Council urges Saskatchewan Justice to implement a Dene language court. The Prince Albert Grand Council believes that the implementation of the Magistrate's Court would complement the court.

PRINCIPLES AND PARAMETERS OF COMMUNITY JUSTICE INITIATIVES

In each of the community-integrated justice initiatives reviewed throughout Western Canada, the community takes a somewhat unique approach to their involvement in justice matters, but several core common denominators are evident.

In addition to the restorative justice principle that emphasizes involving all parties and taking responsibility for their actions, there is an overall goal of moving toward a justice system that is relevant and accessible. The focus is on accountability, teaching, healing and support for victims, offenders, and all those affected, so that harmony is restored or built in the community.

The following themes are central to achieving these goals:

Justice issues should be viewed and handled in a holistic manner that acknowledges the inter-relationship between justice and the broader social, economic and cultural context of the community. It also acknowledges the inter-relationship of mental, spiritual, physical and social needs of each individual, and requires the inclusion of family, the community and an array of co-ordinated resources to meet these needs. This approach opens the door for underlying issues, such as addictions and mental health needs, to be addressed without the involvement of judicial processes. The starting point is for the accused to take responsibility for his or her actions and engage willingly in the process.

Community involvement and building community resources are the essential elements of integrated justice initiatives. Involvement in justice decisions and processes enables communities to be responsive to local needs and reflect the culture, language and attitudes. It also creates enhanced capacity to respond appropriately to offenders and victims.

Building partnerships between key players often occurs through inter-agency groups or boards, such as Justice Committees and Police Management Boards, and through Elders who are advisors and counsellors.

Restorative Justice in the Courts: Creating Opportunity (continued)

Development of diversion and alternative measures in communities is a central ingredient that allows some incidents to be dealt with pre-charge, and provides for the use of local restorative tools in addition to conventional sentencing. These measures are reliant on community input, and include circles, conferencing, mediation, restitution, apology, and other innovations and resources.

Building a framework for judicial processes in the community that interacts with the justice system is essential. Most community initiatives are not meant to be separate from the provincial/federal systems of justice, but instead aim to complement and enhance, and work in harmony with governmental justice programs and services.

There are three components that are the pillars of this framework:

- A responsive decision-maker who is the Peacemaker, Justice of the Peace or the Magistrate. The role of a responsive decision-maker ranges from that of a peacemaker who is a facilitator in circles and mediation, to that of performing the duties of a judge.
- A community, that includes victims and offenders, is engaged in the justice process, often through Community Justice Committees, Court Workers, and Justice Co-ordinators. Parameters and processes are set up with the responsive decision-maker and the justice system to determine what types of offences may be diverted, how decisions to divert are made, and how "sentencing" or restitution decisions will be made. These decisions may be made unilaterally by the decision-maker, or by consensus of a number of the participants.
- An actively engaged human service group to provide resources and services that provide early resolution in dealing with underlying issues that will otherwise default to the justice system.

To maintain respect and credibility, it is important that any system of restorative justice be transparent and accountable.

> **The court should be the place of record, accountability and transparency for all court related matters. As we involve the community and develop more alternative measures and diversion options, the public should still have ease of access to view the process and outcomes, including those that are diverted.**
>
> *Judge, Presentation by Provincial Court judges, August 22, 2003*

Outcomes:

Evaluations of two of the explored integrated justice initiatives, the Yukon Youth Justice Panel and the Manitoba Keewatinowi Okimakinak Justice Strategy, have been published. The evaluations indicated:

- Significant increases in the number of diverted cases.
- More timely responses to all justice matters, as diverted cases were attended to more quickly, and diversion also reduced the court dockets considerably.
- Allows the victim and the offender to participate in a process outside the formal court process.
- Community building and development through information sharing, collaborative decision-making, training and relationship building.
- Recidivism declined considerably.
- The number of matters that resulted in criminal records declined.
- A high rate of completions of community ordered dispositions.
- Reduced costs/improved efficiencies.
- Decreased use of remand and incarceration.
- Increased satisfaction of involved parties with the justice process.

Anecdotal evaluations and research of the other justice initiatives support these outcomes.

> **Research indicates that alternative measures result in high levels of satisfaction for victims and communities.**
>
> *Speaker at Presentation by the Department of Justice & the Department of Corrections and Public Safety, January 15, 2003*

Factors that contribute to success:

1. Adequate funding:

   - To enable reasonable salaries for community people who serve as the justice workers, or in other roles, and to ensure an adequate number of hours to do the job well.
   - To provide sufficient and ongoing training to workers.
   - To provide honorariums and tobacco to Elders, and to pay other miscellaneous expenses.

2. Commitment by all the participants including the Crown, police and defence counsel.

3. An array of community resources to divert to.

Recommendation 3.2

It is recommended that Saskatchewan Justice, together with Justice Canada, priorize the funding of community integrated justice initiatives, such as the proposed models for change.

Recommendation 3.3

It is recommended that Saskatchewan Justice, together with Justice Canada, support and include First Nations and Métis representation in the overall implementation of therapeutic courts such as domestic violence courts, addictions courts and Aboriginal courts.

It has been stated many times that the existing court process and the facilities it uses are foreign institutions that are unwelcoming and intimidating for First Nations and Métis people. The Commission believes more can be done to change the atmosphere of courts and other institutions of justice.

> **The Saskatchewan Branch of the Canadian Bar Association strongly believes that the placement of symbols will enhance respect for the administration of justice in Saskatchewan in all courts by persons of Aboriginal ancestry and will direct the attention of all Aboriginal persons attending these courts to the respect being paid by the courts to First Nations Treaties and to the rich cultural heritage brought by Aboriginal persons to the Saskatchewan social and judicial fabric.**
>
> *Submission to the Commission from The Canadian Bar Association, Saskatchewan Branch, June 2, 2003*

Recommendation 3.4

It is recommended that Saskatchewan Justice and Justice Canada install cultural symbols in all courts in Saskatchewan that will recognize the respect courts have for First Nation Treaties and the rich cultural heritage brought by First Nations and Métis persons to the Saskatchewan social and judicial fabric. The symbolic recognition will serve to remind members of the courts of the history and relationship between the First Nations and Métis people and the people of Saskatchewan and Canada.

A Holistic Approach –

Integrated Services Management

Integrated service, a process by which all services provided to a client are coordinated, was identified as an issue, as a best practice and as a solution to a host of service concerns. The Dialogues in the North spoke of the frustration of the "stovepipes" whereas the South referred to the "silos" of service. The service providers and government presentations also identified frustration in serving clients with multiple needs and with the lack of understanding and knowledge of the other services. There was clear acknowledgement that clients are often overwhelmed with many service providers whose efforts may overlap and contradict one another without any co-ordination.

An example is a youth who is identified as high-risk or who is in conflict with the law. Rather than process this youth through the criminal justice system, the Commission is recommending that an integrated service approach, with a wraparound response that includes the family and community supports, be initiated.

The response to these youth should be to provide a holistic service that builds on the strengths of the individual, their family and their community, and that identifies individual needs and responds with an individualized plan which provides the services necessary to enable the child to become a mainstream member of society. This is a far more respectful response to a young person who may be suffering from mental health, learning or addictions issues, who lives in poverty, perhaps with a dysfunctional family or is homeless, and who may have had little opportunity to experience success in his/her short lifetime.

To engage the child and the family in this process, it is essential that the service providers are respectful to the child and his or her family, ensuring that they are included in the decisions being made.

For integrative services to be accessible and meaningful for a person, they must be available in the person's home community. Service centre locations that are child-friendly are suggested as an important consideration.

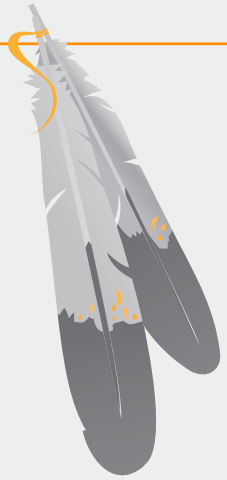
Co-operation between service providers is the key element to successful integrated services. The second key ingredient is a co-ordinator of the service, usually one service provider who is designated as such. The service providers must devise and follow a deliverable plan focusing on the needs of the youth and their family.

BEST PRACTICE

The Commission heard through the Dialogues and presentations of the need for values and principles within the service delivery. Such values and principles are evidenced through the complex needs project provided by the Government of Saskatchewan's Human Services Integration Forum. There have been approximately 17 successful integrated service plans for high-risk, complex or hard-to-service clients in the province. This response to multi-needs clients demonstrates the effectiveness of the integrated case management process. The Commission suggests that this process be a part of the mainstream service delivery approach. There are other examples of efforts to integrate services and bring together the school and health services delivery at Ile-à-la-Crosse.

Recommendation 3.5

It is recommended that integrated case management become an integral part of the service delivery of every human service department or agency of the Government of Saskatchewan.



Establishing the Justice Reform Implementation Vehicle

INTRODUCTION

An important part of this Commission's Terms of Reference is to "recommend short and long-term strategies and identify a vehicle to oversee the implementation of its recommendations."

In our final report we will present our actions and the short- and long-term strategies for implementation. We feel it is important for us to include our partners – the provincial and federal governments and the FSIN and MN-S – in the process of planning for the implementation phase. There are good reasons for making sure work on the implementation vehicle begins immediately to ensure that the work of the Commission sees results. Too often, momentum of other Commissions was lost and windows of opportunity closed while government authorities studied the results of our predecessors. This Commission wants to see the implementation vehicle in action by April 1, 2004.

With respect to the implementation process, this Commission envisions a strong, long-term commitment of the partners based on a true partnership. This Commission recognizes that even the strongest partnership will require a helping hand in making the challenging transitions to creating healthier, just, prosperous and safe relationships in Saskatchewan. This is true for day-to-day activities and for the medium- and long-term processes. This Commission is working with the partners, through the establishment of an independent working group that is tasked with advising the Commission on the implementation mechanism.

ISSUES AND BACKGROUND

We believe there is a good deal of support amongst all the leaders in the provincial justice system to make real, sustainable change. First Nations and Métis people have strong desire and commitment. At the political level, government and opposition leaders have pledged their support and commitment. At the bureaucratic level, this Commission has enjoyed an impressive degree of support. This leads us to believe there are enough people, in the right places and holding the right beliefs and possessed of constructive values, to make the necessary changes to the justice system.

To be realistic, we know there will be resistance to change. Despite this, and because so many leaders and community members want to build a better Saskatchewan, we remain committed to our vision. This is why we need to start the dialogue on implementation now to build for the future.

The success rate of commissions like ours in getting their recommendations implemented has been mixed. We have looked at several commissions, three of which we selected to assist us with our deliberations on what the implementation vehicle should look like, what it should do and how long it should last.

THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

The nature of recommendations advanced had a bearing on their successful implementation. Successful initiatives reflected "an 'evolutionary' or incremental approach to change; that is, they were directed to reforming aspects of the existing system while leaving the structure of that system intact." Secondly, community pilot projects tend to meet with relative success, although they often rely on external funding with "externally established criteria." Neither of these "types" of recommendations are regarded as long-term solutions. Nor are they relevant to the subject of creating an implementation office, unless one considers the fact they may serve to distract attention away from long-term, structural change.

There are many reasons why recommendations fail, according to James MacPherson, Rapporteur for the National Roundtable on Aboriginal Issues convened by the Royal Commission.

> **Implementation is noticeably absent in the case of recommendations that would require significant restructuring, transfers of control and agreement by three levels of government. Certainly, recommendations that are structurally complex and comprehensive require time and resources and in these respects will be difficult to implement. In other cases, initiatives may be accepted in principle by all parties but are delayed at the level of intergovernmental negotiations. Implementation of recommendations that involve significant relinquishment of control by governments will be particularly difficult, if not impossible, to achieve in the absence of political will.**

Even when that political will is secured, there are other challenges.

> **… successful implementation will not be achieved in the absence of an equal and effective negotiating structure … It is evident that Aboriginal organizations often feel excluded from the implementation process or vulnerable in terms of negotiating priorities because they do not possess the resources to participate in the negotiating process on an equal footing with governments. The balance of power remains one in which Aboriginal organizations are dependent upon government funding and resources to support change. Governments are able to control the agendas and the distribution of resources, while Aboriginal organizations may be forced to choose between participating on one level or forfeiting whatever process is in place. This control does not reflect necessarily an absence of goodwill or resistance to reform on the part of governments; it does, however, reflect a relationship, previously taken for granted, that will exert itself in the absence of explicit efforts to overcome it.**

Clearly a new, facilitated approach is required if the long-term processes are to produce the desired results.

The Government of Canada responded to the RCAP report with "*Gathering Strength: Canada's Aboriginal Action Plan*." According to the federal government, "*Gathering Strength* … is a sustainable, long-term plan that is leading to stronger and more self-sufficient Aboriginal communities. It is based on recognizing past mistakes and injustices; commencing reconciliation, healing and renewal; and building a joint plan to support economic development and strong, sustainable Aboriginal governments."

Six years later this Commission has noticed several key initiatives impacting right here in Saskatchewan, many of them aimed at building capacity at the community level for self-sufficiency, healing and economic development.

THE ABORIGINAL JUSTICE IMPLEMENTATION COMMISSION

With respect to implementation of their recommendations, Commissioners Sinclair and Hamilton of the Manitoba Aboriginal Justice Inquiry (AJI) advocated the establishment, by legislation, of an Aboriginal Justice Commission of Manitoba. They recommended the Commission have a board of directors made up of equal numbers of First Nations and Métis and government representatives, have an independent chairperson, and be properly resourced with the necessary staff and resources. With respect to the chair of the Commission, they recommended the position be established as the chief executive officer of the Aboriginal Justice Commission. The commissioners' tasks were to include monitoring and assisting government implementation of the recommendations of that inquiry.

A change in the provincial government precluded the implementation of any of the AJI recommendations, including the Aboriginal Justice Commission of Manitoba. It took a decade and another new government to create something resembling Sinclair and Hamilton's recommendation. Even then, Commissioners Whitecloud and Chartrand of the Aboriginal Justice Implementation Commission (AJIC) also found themselves recommending "That the Government of Manitoba enter into discussion with the Government of Canada and Manitoba Aboriginal organizations with the goal of establishing an Aboriginal Justice Commission." To date, there is no Aboriginal Justice Commission in Manitoba.

THE SASKATCHEWAN INDIAN/MÉTIS JUSTICE REVIEW COMMITTEE

Also known as the Linn Committee, this joint review of the provincial justice system began June 5, 1991, and had a brief existence, its mandate ending December 7 of that same year. It made 92 recommendations in fulfillment of its objective, which was "to make recommendations relating to the delivery of criminal justice services to Saskatchewan Indian people and communities and in particular, relating to the development and operation of practical, community-based initiatives intended to enhance such services."

Since all but four recommendations were implemented, the Linn Committee has been touted as a "qualified" success. Despite this success, the relationship between the justice system and the numbers of First Nations and Métis people involved in the justice system remains unacceptable.

> **Commitment requires commitment across a range of entities, government, community, political organizations within the community or otherwise, that are prepared to have a common dialogue about what needs to happen, develop some common language to be able to communicate these ideas and then make a commitment to move forward to make things better. And when I say that, it's recognizing that people coming to the table very much can have different perspectives on what the issue is. But even within that, if they're working in a relationship of trust and respect, then they can have principled debates about how to move forward. And out of those principled debates comes a sense of criteria and values for what it is they are attempting to do. And there still may be different perspectives about what you hope the end result will be in terms of community or in terms of government, but it's the middle ground in terms of a principled approach that I think is really critical.**
>
> *Former Commissioner of the Linn Committee, Justice Reform Commission roundtable*

DIALOGUES AND THE ROUNDTABLE ON IMPLEMENTATION: DESIGNING THE VEHICLE

On June 2 and 3, 2003, the Commission held a roundtable on the subject of implementation. The roundtable focused almost exclusively on what the implementation vehicle might look like and the role it could play in ensuring our recommendations were put into action; however, some concerns were raised in the process.

For instance, we were told to ensure that there is the political and administrative will to make the implementation phase work. We were asked to make sure the implementation vehicle would survive changes in the environment, including changes in government.

Our stakeholders wanted the vehicle to be effective and responsive to community needs, so that it would not become preoccupied with "high-level negotiations." If our recommendations were implemented, stakeholders wanted to know if the resulting changes were positively impacting the areas of health, education, economic development and justice. In fact, they wanted the vehicle to be able to address the deeper issues, and not just superficial problems and to build on what's already working, perhaps taking them to the next level of effectiveness.

Along with the foregoing concerns, we are reminded that regardless of what processes or strategies are adopted in the implementation phase, there are at least four areas where there must be improvement. They are:

- Levels of offending must be reduced
- Improved levels of community safety
- Levels of victimization must be reduced
- Levels of incarceration must be reduced

We feel strongly that the success of the implementation vehicle to facilitate the work of the partners be judged using these four outcomes.

DESIGNING THE IMPLEMENTATION VEHICLE

We have shared with our partners the following options with respect to the role the vehicle might play in the implementation process, in addition to some ideas on how that office might be structured.

OPTIONS FOR CONSIDERATION

- Legislation and legislative changes
- All-party committee including representation from the four partners (First Nations, Métis peoples, Canada and Saskatchewan)
- A Deputy Minister's working group that provides advice to the governments
- Ombudsman for Aboriginal Peoples
- Aboriginal Advocate
- Premier's Aboriginal Council, advisory to the Premier
- Public Policy Institute on Aboriginal Issues
- Aboriginal Commissioner – Commissioner to all Legislative Assemblies
- Foundation created by legislation for the development of Aboriginal Justice
- Inter-governmental Justice Reform Implementation Board
- Grandmother's Council

The JRC provided to the partners the following set of principles, mandate and essential parameters to guide the implementation process:

PRINCIPLES OF IMPLEMENTATION

- Inclusivity – the principle of inclusivity requires that all people, including youth, have the ability to make or influence the decisions that affect their lives.
- Holistic – the principle of holism requires that a healthy balance of a person's spiritual, emotional, mental and physical aspects be considered. Given that justice is the response to the failure of other institutions and systems in society, the response to justice reform needs to be an integrated one.
- Future focused – the principle of building on the past and looking to the future.
- Mutually responsible and beneficial – the principle of participatory democracy provides for meaningful participation in the democratic process between governments and peoples, including First Nations and Métis peoples.
- Shared resources – the principle of sharing requires that the promise of Treaty and First Nations and Métis rights is respected.

PROPOSED MANDATE

To provide a vehicle with authority:

- To monitor the implementation of the recommendations of the Justice Reform Commission.
- To advocate for individual and systemic changes that affect the justice system but are not restricted to the justice system.
- To educate and inform leadership and their respective governments on the need for change.
- To exchange information with community about First Nations and Métis issues and concerns.
- To assist in the development of community capacity.
- To investigate, effect change and ensure compliance with the spirit and intent of the Justice Reform Commission recommendations regarding the well-being of First Nations and Métis peoples.

ESSENTIAL PARAMETERS OF THE VEHICLE

The vehicle must be:

- Inter-jurisdictional/governmental and legislated by all four partners – First Nations, Métis peoples, Canada and Saskatchewan
- Independent of, but report on an annual basis to, the respective Legislative Assembly's through a mechanism such as a standing committee, Minister, commission or speaker of the House.
- Able to report publicly
- Accountable to the four partners and the public
- Long term in nature (change will take time)
- Subject to periodic review to ensure effectiveness

- Inclusive of front-line workers who regularly deal with the First Nations and Métis population
- Operational by April 01, 2004
- Governed by two advisory bodies:
    - A Grandmothers' Council

      A Council of grandmothers whose role is caring for the future; child centered
    - A Youth advisory process

      A Youth advisory process to advise on the issues relevant and important to youth

Recommendation 3.6

It is recommended that a Working Group be established immediately to be comprised of representatives of the Government of Canada, Government of Saskatchewan, First Nations and Métis governments in Saskatchewan. A Commission representative will chair the group whose task is to recommend an implementation vehicle by December 1, 2003, taking into account all relevant documentation as a basis for discussion.

Recommendation 3.7

It is recommended that an Implementation Vehicle come into effect immediately following the release of the Justice Reform Commission's final report.

Summary of Recommendations

LESSONS LEARNED: THE LEGACY OF THE ROYAL COMMISSION ON ABORIGINAL PEOPLE

Recommendation 3.1

It is recommended that the Government of Canada, Government of Saskatchewan, Federation of Saskatchewan Indian Nations and Métis Nation of Saskatchewan respond to the Justice Reform Commission by December 15, 2003, with the actions taken in response to the recommendations of the Royal Commission on Aboriginal People.

RESTORATIVE JUSTICE IN THE COURTS: CREATING OPPORTUNITY

Recommendation 3.2

It is recommended that Saskatchewan Justice, together with Justice Canada, priorize the funding of community integrated justice initiatives, such as the proposed models for change.

Recommendation 3.3

It is recommended that Saskatchewan Justice, together with Justice Canada, support and include First Nations and Métis representation in the overall implementation of therapeutic courts such as domestic violence courts, addictions courts and Aboriginal courts.

Recommendation 3.4

It is recommended that Saskatchewan Justice and Justice Canada install cultural symbols in all courts in Saskatchewan that will recognize the respect courts have for First Nation Treaties and the rich cultural heritage brought by Aboriginal persons to the Saskatchewan social and judicial fabric. The symbolic recognition will serve to remind members of the courts of the history and relationship between the First Nations people and the people of Saskatchewan and Canada.

A HOLISTIC APPROACH – INTEGRATED SERVICES MANAGEMENT

Recommendation 3.5

It is recommended that integrated case management become an integral part of the service delivery of every human service department or agency of the Government of Saskatchewan.

ESTABLISHING THE JUSTICE REFORM IMPLEMENTATION VEHICLE

Recommendation 3.6

It is recommended that a Working Group be established immediately to be comprised of representatives of the Government of Canada, Government of Saskatchewan, First Nations and Métis governments in Saskatchewan. A Commission representative will chair the group whose task is to recommend an implementation vehicle by December 1, 2003, taking into account all relevant documentation as a basis for discussion.

Recommendation 3.7

It is recommended that an Implementation Vehicle come into effect immediately following the release of the Justice Reform Commission's final report.

Appendix

TERMS OF REFERENCE

WHEREAS, it is desirable and in the public interest the Commission on First Nations and Métis Peoples and Justice Reform review the justice system with the intent of devising solutions to overcome systemic discriminatory practices and address attitudes based on racial or cultural prejudice;

AND WHEREAS, it is acknowledged this Commission shall not, in any way, be interpreted as an abrogation of Treaty or Aboriginal Rights;

AND WHEREAS, there shall be no negative financial effect arising from the creation of this Commission to any existing First Nations and Métis justice programs and initiatives funded by the Government of Saskatchewan;

THEREFORE, the *Commission on First Nations and Métis Peoples and Justice Reform* is hereby charged to perform its duties and functions in accordance with the following Terms of Reference:

1. The *Commission on First Nations and Métis Peoples and Justice Reform* is mandated to hold hearings regarding reforms to the justice system that will:

    a) respond to justice-related issues of First Nations and Métis Peoples;

    b) include in its scope of consideration all components of the criminal justice system including, but not limited to: policing, courts, prosecutions, alternative measures, access to legal counsel, corrections including community corrections, youth justice, community justice processes, and victims services; and

    c) make reports to the Government of Canada, the Government of Saskatchewan, the Federation of Saskatchewan Indian Nations and the Métis Nation of Saskatchewan.

2. In the exercise of its mandate, the *Commission on First Nations and Métis Peoples and Justice Reform* shall:

    a) communicate with Saskatchewan's people, and particularly with First Nations and Métis Peoples, communities, organizations and governments, as well as officials who are responsible for the management and operation of the justice system, for the purpose of generating reform proposals and setting priorities for action;

    b) attend First Nations and Métis Peoples' communities to hear about the types of reforms that may be most useful in these communities;

    c) hold hearings at times and places that it considers desirable and necessary;

d) analyze proposals in light of recommendations contained in previous justice reform initiatives such as the Saskatchewan Indian and Métis Review Committees, the FSIN Strategic Plan for First Nations Corrections, the Royal Commission on Aboriginal People and the Aboriginal Justice Inquiry of Manitoba, as well as researching existing literature regarding crime, victimization and other relevant factors;

e) identify efficient, effective and financially responsible reforms which would improve the administration of justice and would better reflect the values and inherent strengths of Aboriginal communities and promote positive inter-community and inter-disciplinary co-operation, leading to reduced offending, reduced victimization, reduced incarceration and safer communities for First Nations and Métis Peoples;

f) determine and provide solutions and recommendations for reforming the justice system, thereby ensuring the fair and equitable administration of justice for all people in Saskatchewan;

g) examine cultural issues within the administration of justice including the accommodation of Aboriginal languages, spirituality, family values, women's issues, social structures and respect and protection of traditional livelihood and ways of life; and

h) take into consideration the special fiduciary relationship, exemplified by the *Royal Proclamation of 1763*, Section 91(24) of the *Constitution Act, 1867*, and Section 35(1) and Section 25 of the *Constitution Act, 1982*; as well as the constitutional relationship between Canada and the First Nations and Métis peoples with respect to Aboriginal and Treaty rights in the context of the administration of justice.

3. The *Commission on First Nations and Métis Peoples and Justice Reform* shall provide interim progress summaries every six months from the date of their appointment to the Government of Canada, the Government of Saskatchewan, the Federation of Saskatchewan Indian Nations and the Métis Nation - Saskatchewan.

4. The *Commission on First Nations and Métis Peoples and Justice Reform* shall provide their final report to the Government of Canada, the Government of Saskatchewan, the Federation of Saskatchewan Indian Nations and the Métis Nation - Saskatchewan within three years from the date of this order.

5. The Commission will recommend short and long-term implementation strategies and identify a vehicle to oversee the implementation of its recommendations.

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