Section 5:

Submission to the Commission on First Nations and Metis Peoples and Justice Reform

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The criminal justice system in Saskatchewan is a system transplanted, with very little thought, onto our territory. It's clearly ineffective, especially when one considers the youth (we incarcerate more youth per capita with only negative results). Our circumstance in Saskatchewan requires a unique analysis. The potential to have an effective justice system which the people of Saskatchewan are proud of, is enormous. However to achieve that potential we must vigorously re-examine our assumptions.

It is clear that the real purpose of criminal law is to reduce harmful acts of citizens and organized bodies, against other citizens, and other organized bodies. The prohibition against murder, rape, assault, thefts has stood for thousands of years, in all parts of the globe. Indeed, a community in which members do not directly or indirectly attempt to harm each other is the goal of all.

Looking at youth court in Saskatoon, which is in turn representative of youth courts across the province and in turn they are representative of adult courts, one is struck by an anomaly. If the goal is to reduce, and ultimately eliminate, harmful acts of citizens, one against the other, it is difficult to explain why most offences dealt with in youth court, do not involve harm or potential harm against any personal or organization of citizens. At best they can be described as offences against the criminal justice system. It should cause alarm bells to ring. When offences against persons etc. seem to be dealt with poorly why would a system spend most of its time on offences against itself?

It is often suggested that the most serious offences in Saskatoon that are committed by youth are break and enters into residences. These offences are increasing and the present system cannot stop the increase. A reconfigured system could reduce break and enters annually. However as long as the justice system spends its energy on offences without victims, effective responses are almost impossible to attain.

Youth Court, as it works in Saskatoon, desperately needs reform.That requires changes in the way all the main players do business. No authoritative voice, from beyond the confines of the youth 'culture' is calling for reform. For that reason it seems impossible It is the hope of this paper that you could be that authoritative voice. Indeed you may be the future's best hope.

To understand the problem you must start from where the players in youth court understand their roles. Despite some cynicism, most players believe that they are trying to make a safer community, be fair to the youth and are only dealing with serious offences and/or offenders. The last point may need some elaboration, while no one thinks every offence is 'serious' or that every offender is a 'serious' problem they nevertheless accept that the process that brought this youth or this crime to their attention is evidence that this person is to be treated as 'serious'.

It is the conclusion of this paper that youth court in present day Saskatoon actually works against the humane beliefs of the players. Moreover, with relatively inexpensive changes the abilities and training of youth court players could be dramatically enhanced, making the community safer and being fairer to the youth.

When one analyses the youth court docket for October 2002, one is left with an impression of too many youth appearing in court. Over 827 persons were entered on the youth court docket in October 2002 . The method used was to take each name on, for example, October 1, 2002 as a separate person/entry for that day. If that person came another day, we did not have the resources to note that and instead it was entered as a different person /entry on a different day. There were too many charges (over 2,800 charges were attributed to those 820 persons/entries listed in October, 2002) and few hints as to the causes of so much activity. If we knew what was causing the criminal activity we would have a better idea about how to respond.

A better place to look for causes of youth crime is to look at who is in custody. We know that in Saskatoon, most are Aboriginal, most are poor. We know that very few were in school when arrested and generally they are two years behind in their schooling, according to a study done by Kilburn staff recently.[1] We know from national studies that 75 per cent of youth in Young Offender custody have some form of disability[2], that they

1 Andy Field then director Kilburn Hall personal conversation with myself.
2 Tough on Kids

have a much higher than normal rate of psychological disorders[3], that they are much more likely to be depressed and that they are much more prone to both suicide and dangerous behaviours than the general youth population[4]. A one-day snapshot in Alberta showed that 50 per cent of youth in custody have previously been in foster care[5].

There is no reason to believe that Saskatoon's youth in custody are not at least as damaged as the national average and may be more so.[6]

The conclusion that seems inescapable is that youth in custody in Saskatoon are living desperately unsuccessful lives.

Keeping the image of desperately unsuccessful youth in mind an examination of the October docket shows a strange pattern. If the image of the youth players is correct, that we deal with serious offenders with serious offences, then how can we explain that about half of all the charges in youth court are offences which do not involve private citizens at all. Of 2,829 charges, between 1,254 and 1,493 can be described in this way. They involve simply the relationships between the youth and the justice players; we call these Level 1 offences. Moreover the entire system is arranged - arguably badly arranged - to accommodate these relationship differences. It is expected, and it is part of the job description of each player, that there will be conflict in the relationships.

Some observers have called these offences 'system generated' offences. Some have called them 'lifestyle' offences. Others refer to them as 'lace curtain' or the 'church lady' offences. Other researchers have referred to them as 'status' offences. However they are described, they constitute over half of all the charges heard in youth court. This represents between 1,254 and 1,493, depending on criteria used, out of 2,829 charges. Over half of the persons/entries in youth court in October had at least one of these charges. We call these lifestyle Level 1 offences. Indeed, in October 2002 there were a total of 827 persons/daily entries. Of these, 178, were charged only with Level 1 offences. That's 21.5 per cent of all persons/entries in youth court. And as well as being the dominant charge in Youth Court, it also seems to dominate the question of who is remanded for a show cause (bail) hearing.

It is easy to underestimate how important this is. First of all, the facile response is that these charges are the result of a youth 'getting a break'. For example, they could be in jail but instead they are let out and in return they should keep their conditions. The charges, which are called Level I in this paper, are mostly breaches of conditions, conditions imposed as an alternative to custody, as mentioned. So the image is thrown up of a mercy extended which is scorned by a youth who breaks their promises.

However, this facile response assumes too much. First of all it assumes that criminal law owes its first allegiance to itself. Take the example of a youth who did many break and enters, is caught, and then released on conditions including a curfew. If the youth then quits committing break and enters but continues to stay out past his curfew, for reasons having nothing to do with criminal activity, has the criminal law system succeeded or failed? If the youth has been convinced by the criminal law system not to do break and enters, perhaps because other people are harmed, a fact not totally understood before by the youth, then the system has succeeded to meet its objective, to make the community safer.

The real situation, though, is that the youth who is out after his/her curfew, is considered a failure for that reason alone. This is an example of a system putting itself first. If the same youth is returned to custody because of his breach he may go through another attitude change. He may decide that his true allegiance is to the other youth who show him friendship and kindness in custody. He may decide to recommence break and enters with his new friends. He may even decide to do them before his curfew. Clearly this is a failure, however if he keeps his curfew and is not caught for subsequent break and enters then this is thought to be a success for the criminal justice system.

[3] Ibid
[4] Ibid
[5] Ibid
[6] See Carol Laprairie aboriginal over-representation of the Criminal Justice System: A Tale of Nine Cities

The simplistic response makes another erroneous assumption: that putting a youth in custody is a response that is consistent with its responsibility to the general community to reduce crime. The argument is that a youth in custody cannot do such things as break and enters. True enough. But custody/jail tends to increase crime rather than decrease it, this being true across the Western world. Moreover, within Saskatchewan's unique circumstances, custody tends to encourage youth to organize their harmful acts. Finally, harmful acts continue while in custody. Once it is examined, one realizes that putting youth in custody as a general response to crime is contrary to the purpose of criminal law which is to reduce harmful acts by one citizen against another citizen.

Finally the facile response assumes custody/jail as being resource neutral. A "what else are you going to do?" attitude takes over. Considering the tremendous expense of this option it is important to remember that there may be alternatives to custody that are equally or even more effective than custody. The "what else are you going to do?" attitude when considering jail is often a close cousin to "the ashtrays are full better get a new car" attitude.

The question must be asked. Does this make any sense? Is this the only way?

Since these offences do not involve private citizens or even private corporate bodies as victims, then clearly a democratic society has only one interest. How to deal with youth charged with these offences in a way that discourages any harm to private persons is the question. What is required is a way that deals with youth fairly, especially those marginalized by race, disability, poverty, homelessness or frequent moving, being orphaned, often depressed or suicidal, failing at school, often suffering from mental disorders.

If the economic resources that go into Level 1 offences are spent in a more rational manner, that change in itself would create a more effective justice system.

Taking another look at the October 2002 youth docket, one sees that of the offences against persons in the community, more than half of what's remaining are entirely economic crimes. We call these Level 2 offences. That is to say, that either the private citizen or business suffered an economic loss, for example, damage to their property, or there was the potential for loss. For example a shoplifter stopped outside the door of the store, or a person was found with break and enter tools. Others call break and enters economic offences. For example, the Province of Saskatchewan in A*bout Youth Crime and Youth Court (1997) YOP-2 03/97* stated at page 2 A "the most common property offences committed in Saskatchewan are theft under $1,000 and break and enter." That may be correct, However with some hesitation we considered break and enters to dwellings a Level 2(b) offence.

If we are to treat these Level 2 crimes as serious, then we should be focussed on restitution to the victims. If we want to treat the youth, with all their disadvantages, fairly, then we would want to have them make restitution and to help them become more successful in the community. If we are to protect the community then we need to show the youth that both the youth and the community have the same interests; a community where all succeed and all live well.

Together the 'lifestyle' or Level 1 offences and the 'economic' or Level 2 offences are about 80 per cent of the October 2002 docket. Of what's left, most are crimes which by their definition involve either no physical harm to a person or minor physical harm to the victim. These include assaults, threats, possession of weapons. These we designate Level 2b and 3 offences.

To deal with community safety, youth need to know that the violence, even threatened violence has negative implications in the general community. To be successful in the general community the use of non-violent techniques is essential. Indeed, in almost every field of human relationships violent techniques are being unmasked and lead to resistance when used. Whether racial epitaphs, or sexist sneers, or mocking the disabled, what was once acceptable is now a recipe for losing influence. Barbara Coloroso, the world famous parenting and anti-bullying expert stated that when one looks at youth who bully, one notices the complete lack of ability to flirt with other youth. To be fair to the youth, there is an obvious need to learn how to be in the community, to strive for success, and to attract support rather than creating antagonism.

Looking at the extremely crowded October 2002 docket, one notices that 'lifestyle' or Level 1 offences, 'economic' or Level 2 offences, and minor assault or threats or Level 3, make up 94 per cent of the docket. What about the 6 per cent left?

Of what remains, the next most dominant type of offence is where there may or may not be actual harm but where the charge implies a level of dangerousness. We designate these as Level 4 offences. For example an assault with a weapon charge normally means a youth has picked up a weapon, a stick, a knife, or a bat, and threatened to hit someone with it. It doesn't mean the youth actually hit them and if that is the case then all prosecutors and judges in Saskatoon that I'm aware of, reduce this charge to a threat or a common assault. Nor, if there is contact, does the charge tell us if it is more than trifling contact. For example a robbery with violence in Saskatoon has included this actual scenario. A youth, the victim, is holding a drink. Another youth, the offender, asks for a sip. The victim agrees but then decides the offender is taking too big of a sip. The victim demands the drink back, the offender refuses and pushes the victim's hands away from the drink. Therefore, robbery, using physical force, without consent, in the taking of, or in this case keeping property.

On the other hand, a robbery can be a real violation. It can also typically involve a group of teenagers surrounding another youth and using force or fear to take an article of clothing, or a bus pass, or small amounts of money. One cannot tell by the charge whether this charge is more like a minor assault or more like a serious assault.

These charges and the ones rated more serious and designated as Level 5, Level 6 - Escape open custody, 7, and 8 - clearly require more careful study by the trained professionals in Youth Court. Some of these charges can best be dealt with by other agencies who are more successful in changing youth behaviour. Some may have to be monitored more closely by youth court personnel. Some may require youth court constant supervision or even custody. The point is that, these, and more serious charges require Youth Court to seriously consider all options and in some cases to monitor closely the responses. This takes time. The Youth Court in October 2002 in Saskatoon dealt with more than 2,800 charges. More than 2,500 of those charges were either 'lifestyle', 'economic' or 'minor assault' offences. In other words it is these offences and not those more serious offences which youth court is presently set up to deal with. And as it turns out, that makes the problem worse.

Let us assume one hurries through each charge and only takes 10 minutes for each. That works out to 28,000 minutes or 466 hours, or about 110 hours per week. Obviously matters are disposed of much quicker than that, mainly through adjournments, and by treating some charges as less serious. Clearly, youth court needs to be restructured in such a way that they can concentrate their expertise on a few cases each day. This cannot happen unless there is a high degree of confidence in the youth courts that there are methods developed that keep it from being overwhelmed again as it was in 2002 and other years.

Author and Crown Prosecutor Rupert Ross explained this reality:

> Everything that we don't like in society gets funnelled into the process that ultimately is set to handle [convicted murderer and serial rapist] Paul Bernardo. We put moose hunters who shoot out of season into that process, drunk drivers, schoolyard fights, all into a process that is ultimately geared to deal with the most dangerous offenders. And when you're dealing with those offenders - people who, for whatever reason, are unable or unwilling to live within society's norms, who are just too dangerous to have on the streets - then we need a process with all of the protections that we presently have in it, because we're saying that the state wants to take away your liberty and for a very long time. And then we need all those processes, those rights, all those protections. And we need the adversariality of it, because it is adversarial. My worry is that, by funnelling absolutely every thing into it, we are creating adversarial approaches and antagonisms and angers and alienations in situations where they may be the problem, and we may be adding to the very thing that we're trying to cure. *(see also John Crawford - Just Another Indian, Warren Goulding, Fifth House Publishing 2001)*

The problem isn't simply a problem restricted to Youth Court. The problem begins with the arrest or laying the charges. Since 50 per cent of charges are 'lifestyle' charges, clearly this takes an inordinate toll on resources. The process involves youth workers submitting breaches, then the Crown reviewing it, the warrant being typed, the police report generated, the police arresting the youth, taking the youth to the police station, presumably pictures and prints taken, parents notified, transport to Kilburn Hall, where the youth must be stripped and searched and processed. The youth is then held there until a morning when the youth can be transported to court, again searched, held until the matter comes before the court, often remanded for show cause hearing the next day. Interviewed by Legal Aid, perhaps parents again notified, transported back to Kilburn Hall, again searched, again held until a morning when Youth Court sits, again transported, again searched, again held. The youth is probably interviewed twice more by Legal Aid. The parent has now made two trips to Youth Court causing child care and other problems at home. The Crown and Legal Aid have talked and most likely have agreed to release the youth. If not, then either that day or some subsequent day, when the youth plans are the most solid since the law is that the youth only gets one chance to ask for his release (unless the Crown, after the youth is denied release, agrees to bring it up again, something the Crown almost never does, the assumption being: why should I have to do it twice, the Judge already said your client should stay in custody) the youth's plans are presented in the context of a hearing to a Judge, who then rules whether the youth should be released or not. This is an extremely expensive option both financially and in human resources. If released, the youth must obey conditions which first must be documented then typed into a release document which must then be both stored by the court for easy retrieval and another copy signed by the youth and given to him or her. The conditions are often monitored by other workers. The youth must return to court another day which involves meeting with his or her lawyer and if the youth fails to do that, that will require an adjournment to set a new appointment because the Legal Aid lawyer will have too many files. Indeed, this person will be the lawyer for most of the people on the docket and will be unable to leave the courtroom for very long to do an interview. Normally this process, this enormous amount of work, only a portion of which has been acknowledged in this description, is triggered by such things as a young person not going to school, not coming home on time for curfew, perhaps not doing community service work. The present day response is to have a series of strangers deal with the youth, one after another, arresting officer, identification officer, remand officer, transport officer, booking officer at Kilburn Hall, staff at Kilburn, prosecutor, judge, Legal Aid paralegal, transport officers, intake officers, Legal Aid lawyer, etc. Remembering that these are very unsuccessful children, the question must be asked, is this the only way? Does this make any sense?

The situation is no better when police, perhaps thinking that it is part of their duty to actively search for lifestyle offences, proactively try to stop or engage youth in order to discover 'lifestyle' offences. The arrest, transportation, documenting and contacting the parents can take the arresting officer up to one and a half to two hours according to police officers. One must remember that these are about half of the 2,800 charges heard in youth court in Saskatoon in October 2002.

Would it not make more sense to use an Elder, or someone skilled at making friends with youth? Or someone, or some group of people skilled at getting needed services for youth, some group of people who can take the referral from youth workers or police or JIR workers, or whoever, and can look for the youth. These people could meet the youth on their own turf and reason with that person. They could try to solve some of the problems, develop a relationship, even a friendship. At the risk of repetition, the present system takes enormous resources and leaves unsuccessful youth feeling that their lives are in the hands of people who don't care and where no private citizen has suffered any harm at all. Does this make any sense?

The present system involves custody. The research on custody tells us that it does not tend to decrease crime either in the community or decrease crime committed by the person. In fact custody tends to increase future crime in those who are incarcerated as compared with those who are otherwise similar but do not enter custody facilities. Other research tells us that the more often a youth is in custody the greater the chance that the youth will commit future crimes. Of course, while not researched that I am aware of, it seems common ground that what activity there is in creating gangs in Saskatoon that activity is strongest in youth facilities, where the recruiters have a captive audience, so to speak. It seems that over use of custody can destabilize the communities the youth came from, making these communities more disorganized and therefore vulnerable to harmful acts.

On the other hand, rather than arresting or issuing warrants for youth, a referral to a group of youth-friendly, skillful, mostly, if not all, Aboriginal workers is similar to other programs which has been shown to reduce crime.

The Washington State Institute for Public Policy researchers looked at both effectiveness and cost of justice programs in order to calculate a 'bottom line' analysis. They looked at a wide range of options, for example with youth they examined boot camps, Scared Straight, Q.O.P. (a combination of mentoring and high school graduation incentives), various family therapies, mentoring (including a Big Brothers/Big Sisters study), more probation, less probation, job supports, etc. Essentially, one could divide the 22 successful/unsuccessful youth programs into two 'styles'. The successful seem to make a long-term commitment to positively work with the youth to solve problems and help the youth be successful. The unsuccessful tended to require the youth to go through some negative experience, such as boot camps, Scared Straight programs. The negative experiences actually increased recidivism by 10 per cent (boot camps) and 13 per cent (Scared Straight) respectively. The cost to the system and future victims after accounting for the actual cost of the program itself was about a $3,500 loss per youth per placement in a boot camp and a $24,500 loss per youth for each placement in a Scared Straight program. (All these estimates are in U.S. 2000 dollars).

On the other hand, the Institute found that, a person who could simply co-ordinate already existing services in a community and can skilfully ensure that the appropriate youth can get these services, can reduce crime by 13 per cent and this was found to benefit the community $14,831 in saved costs per person. (Again, costs were in U.S. 2000 dollars and were calculated after the expense of the program was taken into account).

If a team, such as proposed, could divert the youth who are charged with lifestyle offences or Level 1 offences where no private citizen was harmed, and could retain a friendship with the youth, or connect the youth with an appropriate mentor, the Washington State Institutes study showed a 27 per cent decrease in crime. This would mean giving a benefit, after paying all costs, of $27,000 per person advantage to the community and to the justice system.

As a point of comparison, earlier we reported that in October 2002, 178 persons/daily entries, out of 827 persons/daily entries, were persons charged only with Level 1 lifestyle offences lifestyle. Many of these people came to court more than once in October. We didn't have the time to check that. But assume that each person charged with *only* a Level 1 offence - a lifestyle offence, where there is no private person as a victim - went to youth court twice in October.

Assume that our community (Saskatoon) wished to take advantage of the two programs just mentioned, for example, ensuring that youth get the appropriate services already in the community, and developing a connection or establishing an appropriate mentorship program for the youth. The first program seemed to have reduced crime by 13 per cent, the second by 27 per cent making a total of 40 per cent.

Assume that we want our new team of youth-friendly Elders and workers to both negotiate and advocate for the services that the youth requires, services which already exist in the community. And we would wish our youth-friendly team to have the time to either befriend the youth or set up an appropriate mentor for the youth, of course maintaining contact to ensure that the mentorship is a success. Although these are two different processes let's assume that we only get the benefit out of one and so we'll only calculate the bottom line payback from the mentorship program.

The Washington State research tells that we could expect 'a bottom line' payback of $27,000 per participant. Although there were 178 names/entries (whose only offences were Level l offences) listed in October we already assumed that on the average each real person went twice to Youth Court in October, therefore 178 entries should be halved. That makes 89 persons.

Let's also assume, for the sake of caution, that we will use Canadian dollars at par with American dollars. For even greater caution let's also assume that not only wouldn't we get the benefit of the ensuring and advocating for already existing services for youth who need them (the Institute expected that value was $14,831.00 per participant in order to reduce crime by approximately 14 per cent). Furthermore, let's assume that Saskatchewan would only receive half the benefit as laid out for the appropriate diversion/mentorship program that our youth-friendly team would set up. That program was found to reduce crime by about 27 per cent and would expect to have a bottom line benefit of $27,212.00 per participant.

In only one month, using Washington State Institute for public policies research only as indicators and using it very cautiously and assuming that we would only get the benefit from Level 1 offences, the bottom line benefit is approximately $1,200,000.00. That is 89 persons x $13,600 per person.

The saving/bottom line benefit in *only one month* is enough money to hire staff for a team of five on duty seven days per week, 24 hours per day ready to respond to any police who find a youth charged with a lifestyle only offence. This assumes an annual salary of $50,000 per year including benefits, etc. That means one could hire 24 workers, at 40 hours per week or a total of 960 hours per week. There are 168 hours per week and if there are five workers working every hour that equals 930 hours. If each of the 24 workers befriended only three persons per month - charged with only a Level 1 offence - then they would probably be making friends with many people who probably don't need that much help.

However, it is not necessary that that same team should deal only with those who have a Level 1 offence. It would make just as much sense to have that team respond to all Level 2 offences as well. Remember, Level 2 offences are strictly economic loss, or potential for economic loss. Out of 837 persons/daily entries in Saskatoon Youth Court in October 2002, 437 persons/daily entries were entirely lifestyle, Level 1, strictly economic loss or potential loss, Level 2, or a combination of the two. That equals 52.2 per cent of all persons/daily entries in October 2002 Youth Court.

Using the same calculations as earlier desribed, assuming no benefit from the co-ordination of services, treating U.S. dollars as equivalent to Canadian dollars, assuming all persons in these categories came to court twice, and that we would only get half the benefits calculated by the Washington State Institute for establishing an appropriate mentorship, then we would deal with 218 persons and would benefit by $13,500 per person. That's over $2.9 million per month and one month only savings pays 59 workers. Only Level 1 charges would allow for 23 workers. That allows for a staff of 12.5 persons per hour 24 hours a day, seven days a week.

Since the chief need of a victim in a Level 2 offence, strictly economic, is to recover any loss or to make good any damage, then the resulting savings could easily be set up to enhance a program like Youth Works in Saskatoon. The Youth Works program finds paid employment for youth. In that program half the wages go to the victim, one-quarter to the youth and one-quarter to pay for the program. It is submitted by this paper that that program should be dramatically enhanced so that every economic loss is covered by that program and that the ratio should change to half the wages for the youth, one-third to the victim and one-sixth to the program. Accordingly, since the staff is available to respond to calls immediately, one could ensure that the victim is satisfied that preparations are being made to ensure their full financial recovery. They will appreciate the fact that it will be reasonably soon, and that they could receive an apology after the youth has received some counselling from our youth-friendly team. At the present time the system is extremely slow, victims rarely get restitution, and the youth rarely apologizes.

If one gave our youth-friendly Elders and workers the responsibility for common assault and minor offences of violence such as common assaults (Level 3) and a break and enter to a dwelling house/level 2(b), one could expect a return rich enough to have a staff of about 85 workers or 18 persons per hour, remembering, of course,

this is paid for out of the benefits accrued from only one month's savings or benefits, making the other 11 months free.

Of course, we expect that such economic analyses will receive much resistance and even ridicule. However, as mentioned before, this paper's argument is that you were in a once in a lifetime historic position. Early incarceration, which is a highly favoured response presently, is not only expensive but produces crime. The techniques that we have suggested actually reduce crime. We submit that there is more than enough money being spent already in the youth criminal justice system to make these programs very real. Obviously much of what we are suggesting could be done by youth workers, custodial workers, and other workers whose main job now is to simply process these charges with no hope of making life better for the victim, the youth or the community.

In the 1990s, the Crime Prevention Council of Canada estimated the cost of crime to Canadians at $46 million per year. *(September 1996 National Crime Prevention Council economic analysis committee Money Well Spent: Investing in Preventing Crime at page 14)* Let's assume that crime has not become more expensive in the last six years. Let's assume that Saskatoon's crime rate is average; it isn't, it's higher. Let's also assume one-quarter of all crime can be attributed to youth. Let's assume Saskatoon's population is 200,000 people and Canada's population is 30,000,000. That means roughly one out of every 150 people in Canada live in Saskatoon. Therefore it is reasonable to assume that the cost of crime itself in Saskatoon equals $46 million divided by 150 or $306,666,666 per year. If in order to calculate the costs of the youth, and they are one-quarter of that, then that cost is $76,666,666 per year for youth in Saskatoon. Clearly if we are to trust the analyses of the Crime Prevention Council of Canada the benefits of reduction of crime must be enormous.

No doubt there will be an objection that the Crime Prevention Council of Canada estimates, the Washington State Institute for public policy estimates, and the other volumes of research that come to more or less the same conclusion are all second rate. Or perhaps it could be argued that they are first rate analysts, however Saskatchewan is very different from the rest of Canada and North America.

When the actual situation is examined closely we find that Saskatchewan is not dramatically different than other provinces in Canada. Indeed, it is very similar to all other provinces, in terms of youth crime, in serious offences. Where Saskatchewan goes right off the map and becomes a much harsher sentencing regime is when we get to Level 1 offences which are lifestyle offences. *(Interprovincial Variation in Youth C Court - Canadian Journal of Criminology)* So those who suggest that Saskatchewan youth crime is different than other provinces must anchor their arguments in the greater use in Saskatchewan, of arresting youth for lifestyle offences. The other two offences for which we are somewhat higher than most other provinces, break and enter into residences and car thefts, are eminently solvable crimes using our youth friendly and Elder led approach.

No one in Saskatchewan, that we know of, has bothered to find out how much it costs to have a simple breach initiated by a youth worker and followed the cost of the process through the entire system. It's not simply good enough to be told that there are already people doing these jobs and therefore we cannot assume that there will be savings in reducing these workloads because that means layoffs. This paper is not urging layoffs of workers but a change in how they do the job. To argue that the people who are presently hired by the Province of Saskatchewan to initiate the processes needed to shift resources, are incapable of doing the same, a clearly untrue statement, then is to admit that the most cynical offender is correct when he states that the entire criminal justice system is set up only to provide job security, and good jobs, for people to oppress them. In essence, to suggest that we are unable to change and therefore must rely on oppression which results in greater crime rates, greater victimization, ever growing public cost, broken lives among disabled, the Aboriginal, the poor, and greater alienation in our community is to cover ourselves in moral bankruptcy. Winston Churchill considered jails a blight upon the honour of a civilization. Saskatchewan will have shown him to be correct. However, we need not assume any such gloomy analyses, we are clearly intelligent enough to reconfigure our resources in a more rational way.

One of our recommendations is that all Level 1, 2, and 3 offences should eventually be primarily the responsibility of our youth friendly elder-lead team. If that is done, approximately 77 per cent of all charges

which once went to Youth Court will no longer go there; at least not in the first instance. Rather than an average of 37.5 persons per day in Youth Court in October of 2002, there would be an average of 8.6 persons, unless of course we use a previous caution, that is, each person/entry came twice each month to Youth Court in which case we can expect 4.3 persons per day in Youth Court.

Youth Court in Saskatoon is scheduled to sit from 9:30 to 12:00 Monday to Friday. That's 12.8 hours per week or 2.8 hours per day. At 37.5 persons per day, that's four minutes a person. Clearly that is unacceptable but can become normal unless there is a change.

An examination of a portion of the October 2002 docket (October 1 - October 15) shows that there were 58 show cause (bail) hearings during that time for an average of 5.8 show cause hearings each day. If one was to remove all the show cause hearings that dealt only with persons who had only a Level 1, 2 or 3 offence, which were 36 show causes out of the total of 58 show causes, there would be an average of 2.2 show cause hearings per day. However, even that number is an over-estimate. Five of the remaining were escapes from open custody. While they are listed as show cause hearings, they actually are normally sentencings in Saskatoon. Accordingly, one would only expect 1.7 show cause hearings per day in Youth Court in Saskatoon.

The point, of course, is that Youth Court personnel with such low numbers can take a very close personal friendly, considered approach to youth that comes before Youth Court. With numbers like these, then one could expect that the use of circles would be the norm rather than the rare exception.

At present, normally Youth Court in Saskatoon is crowded with well over 100 people, youth, friends and relatives from 9:20 a.m. to about 10:30 a.m. This big a crowd, in one room, appears suspiciously like a signal to the youth that criminal activity is far from being unusual. It is submitted that this big of a crowd suggests that criminal activity is quite an acceptable pattern.

A final note, on using this system rather than the traditional system with respect to 'lifestyle' offences. The majority of persons involved in the youth criminal justice system know that the youth we consistently deal with come from extremely difficult backgrounds. Most workers in the criminal youth justice system are extremely decent and humane and are very willing to take those circumstances into account. The problem today, however, is that the system is so rigid and is so 'sharp-toothed' on defining a 'lifestyle' offence as a serious offence that no one participant has much of a chance of changing the group dynamic. Although there is no way it can be calculated and is very difficult to quantify, I would suggest that another dangerous result of this situation, besides what has been previously described, is its effect on the workers themselves. The workers are constantly being asked to respond to difficult circumstances, painful circumstances, indeed circumstances of gross injustice and are being encouraged to overlook the difficulties, overlook the injustice, and to continue processing a child or youth. I would estimate that most workers have become involved in this youth criminal justice system in order to help youth. They know coming in that children are shaped by adults but the effect of not being able to help and to be expected to ignore these terrible injustices is to encourage the opposite result. I think that people find Youth Court very difficult and find the entire youth justice profession very difficult because the system effectively encourages cruelty. It suggests that these terrible problems do not need to be resolved and that these relatively minor problems take precedence. For example, it is not unusual to hear people, usually strangers to the youth, complain about the lack of 'teeth' in Youth Court orders. Clearly, they think a little ripped flesh will straighten everything out. Rarely do we hear youth justice professionals express righteous outrage at such obviously ill-informed and even harmful statements. However it is a tribute to all of the workers that they actively resist the temptation of thinking that way in their own personal work. On the other hand, it is a condemnation of the present day system that something that so clearly encourages future crime, is clearly very expensive, is clearly time consuming and frustrating, has not been replaced, nor does it seem that it is likely to be replaced, unless somebody comes forward and demands change.

Over eleven years ago, in January 1992, Judge Patricia Linn reported to the Saskatchewan Legislature on issues of justice relating to Aboriginal people. The recommendation with respect to youth stated:

> The Committee is concerned about the number of youth who are subject to the criminal justice process and build up lengthy criminal records due to 'system-generated' charges such as failure to appear or breach of a *Young Offender Act* disposition. Recent national data indicate that approximately a third of all youth recidivists are charged with system offences, and that 46 per cent of those charges relate to failure to comply with a young offenders disposition. Such charges may reflect a transient home life, lack of parental guidance, lack of transportation or lack of access to a phone. Initiatives to develop better supports for Aboriginal youth involved with the criminal justice system might lessen the recurrence of these problems.
>
> We believe that such suggestions for change in services to young aboriginal offenders deserve to be fully reviewed in an integrated fashion taking into account fiscal and operational issues, to develop a progressive strategy by dealing with aboriginal youth in conflict with the law.

What is being argued in this document is precisely what is recommended by Judge Linn. Indeed, the situation has worsened since Judge Linn's report, now more than 50 per cent of all persons charged in Youth Court have system generated offences included in their charges. Judge Linn reported that "...approximately one-third of all youth recidivists are charged with system generated offences..." Using her definition, in October 2002, 52.8 per cent of all offenders, whether first-timers or recidivists, have system generated offences. Using the definition that this paper chose the number is 63.3 per cent. The difference between Judge Linn's calculations and this paper's calculation is mostly due to this paper defining such offences as possession of marijuana, giving a false name to police and other offences as lifestyle offences. Regarding giving a false name to a police officer, originally that offence was defended as one necessary in order to make sure the police did not waste their time. Consider the following actual case of R. v. B.D.S. The police report reads" "...the writer immediately recognized him as B.D.S. and was aware that there were outstanding warrants for his arrest for criminal charges and when I asked B.D.S. what his name was, B.D.S. provided the false name of B.R. to police at that time. B.D.S. was immediately arrested on the outstanding warrants and for obstruction." Clearly, rather than a shield this has now become a sword in order to add charges.

The root problem is that system players are afraid to say these breaches are not serious charges even though they do not include any harm to any private citizen or private body. The explanation for this behaviour is perhaps the belief that the reason that one takes these charges serious is to engender respect for the law. While that makes a lot of sense for middle-class people, they do and they should have respect for the law because the law treats them fairly, the same concept has no relevance to those who have been marginalized. The law is representative of a system both legal and non-legal that has, indeed, marginalized them. Accordingly, respect for the law must resemble for the marginalized what it resembles for the middle-class. That is to say, a system that ensures that they themselves will be treated fairly and included in the community rather than excluded. Those who suggest that system generated offences or lifestyle offences, need to be enforced in order to develop respect for the law are actually not talking about respect and mutuality but are talking about fear. Once again, to state the obvious, they are mistaking respect for the law for fear of the law. It is true that when a person has been sufficiently marginalized whether by disability or lack of education or race, that that person tends to have little respect for that process that has excluded him. It is also true that the process that leads to a feeling of being excluded and marginalized can be so intense, can be so extreme, that the amount of pain suffered by the person excluded or marginalized is already much greater than any that the law can provide. Accordingly, one should not be surprised that a marginalized person is not particularly frightened of going to jail, which is populated by other persons who are also marginalized. Indeed, it should not surprise the middle-class, when the case is made clear, that when justice professionals say we treat breaches of sentences and conditions every bit as seriously as violence that the marginalized use the same concepts and say to each other the justice system doesn't think that violence is any bigger deal than breaches of conditions. Accordingly, once the middle-class becomes aware of that dynamic, it should not be surprising to them that marginalized people would rather suffer violence than contact the police. On an extremely gross level, it's not uncommon for persons to tell us that although they

witnessed violence, the violent person told them not to phone the police because the police are more likely to arrest them for breaches than the offender for the violence. On a somewhat more subtle level, the result of the justice system treating curfew breaches as significant 'serious' offences is that there is a greater commonality between the violent and the victim than there is between the victim and the justice system. Accordingly, once the middle-class becomes aware of it, it should not surprise them that they have abandoned the moral high ground.

Your commission has the, perhaps once in a lifetime opportunity, to unmask the extreme foolishness of the present day system.

RECOMMENDATION:

1) We recommend that in Saskatoon there immediately be established a youth friendly, Elder led team of largely but not completely, Aboriginal persons who have responsibility for all Level 1, 2, and 3 offences. Their responsibility would be to attempt to ensure that all persons with Level 1 offences are dealt with in such a way that the youth can carry on with their life but the concerns surrounding the consideration of charging with a Level 1 offence have been addressed. Unless the youth refuses to be engaged by the youth friendly team, or unless the youth wishes to go through the ordinary court structure, these allegations should not be considered charges and should be referred instantly to the team. It may not be necessary to hire new staff to look after these positions if youth workers can be redirected from their present duties. Furthermore it is expected that custodial workers will also be less necessary. They too could assist in ensuring that these allegations do not transform into charges.

2) We would also recommend that very quickly our youth friendly, Elder led team should be assisted in taking over all Level 2 economic offences and enhancement of the Youth Works Project program is appropriate. However, that program should be changed so that 50 per cent of the youth's wages goes to the youth, 25 per cent goes to the victim and 25 per cent to the program. In return, youth should be encouraged to maintain that program until all victims including insurance companies are repaid.

Moreover, that program should be given enough money to establish a revolving fund sufficient to allow those who are adversely affected economically by a crime and do not have the resources to repair the damage done, an immediate payment or partial payment. Clearly, a family that relies on one car to care for children needs that car repaired immediately. The repayment of the fund should come from the youth but it would be best if in all cases at least some money should remain owing so that the youth can potentially give the money to the victim along with an apology.

Moreover, it is very important that this program emphasize its ability to improve the conditions for marginalized youth charged with a criminal offence. This should not be downplayed. The question could be asked, "but won't people commit crimes so they can be part of the program"? Rather, it should be a matter of serious study as to how to make it clear to youth how this can assist them in becoming employable. Indeed the program should be funded so that the goal of having youth maintain employment *after* restitution is paid is frequently met.

On Level 3 offences, the youth friendly, Elder led team should be responsible for making sure that any psychological treatment, any family counselling, and any sentencing or healing circle that would be useful is convened.

When this team becomes fully functional, it is submitted that normally all the Level 1, 2 and 3 allegations should be the responsibility of the team and should only come to Youth Court and be transformed into charges in exceptional circumstances.

3) At present, police and prosecutors have the discretion to end charges that they think are too minimal to take to court. It is worth noting that they may withdraw charges or not charge for other reasons as well. However, at this moment the Crown Prosecutor's office argues that judges should not have the power to withdraw charges that the judge thinks are clearly too minimal to spend the court's time on. We would recommend that the Crown Prosecutor's office in Saskatchewan immediately and publicly announce to all courts that they accept that the doctrine of de minimus non curat lex, which roughly translates from Latin into: the law does not deal with trifles. Clearly, the law very much deals with trifles in Youth Court in Saskatoon and this is accepted by the Crown Prosecutor's office. While the doctrine should be accepted by the Crown Prosecutor's office, they, of course, have the right to disagree with its application on any particular case. This is especially important in Youth Court as shown by examination of the Youth Court docket in October of 2002.

This would be particularly useful for the cases that still remain in Youth Court after the youth friendly, Elder led team takes over Level 1, 2 and 3 offences. Clearly the judge and the Youth Court professionals will be willing to try new techniques for changing behaviour with a few youths still going to Youth Court. Some of these experiments may be very wise. Some of them may have missed the mark. With the ability of the judges to be able to dismiss matters as being too minimal for the Youth Court to be concerned with, it would allow judges to recognize efforts to meet the goals. A common example might be: "I know you've been trying very hard to go to school every day. And we understand how you can be angry when you were told you nevertheless failed an exam and as a result of your anger you thought it was better to leave the school for the day. We don't think that is an important enough issue for you to be charged with failing to attend school regularly." An actual case involved a young person who was in open custody and was required to go to Main Street in Saskatoon. He, along with other students went across the street to the 7-11, bought a Slurpee and went back to the school. The school teachers, of course, did not want everybody to go over and buy Slurpees at 7-11, so they phoned all the parents. This particular youth was a young offender with the open custody facility and they decided to treat it as an escape lawful custody situation. The police were then called. He was arrested and placed in Kilburn Hall over the weekend. He was held for a show cause hearing from Monday to Tuesday, a show cause hearing was run and the matter was ultimately set down for trial. It did not, ultimately, proceed to trial. Approximately two weeks before the trial date, I was contacted by the Prosecutor's office and told that they did not wish to proceed with that case.

4) We would recommend that there be a body set up much like the Auditor General, the Ombudsman, the Children's Advocate, and the Human Rights Commission, that would be a Commissioner or Peace and Justice in the Aboriginal and Non-Aboriginal communities. We would recommend that that Commission have the right to address the Legislature and the public directly as an independent body and advise the Legislature how the operation of various institutions within the province are affecting the success of our citizens (peace) and how the failure of public institutions and other bodies is affecting crime rates (justice) in our community. Perhaps the commissioner should also have responsibility for the child friendly, Elder led teams. Perhaps not.

5(a) We recommend that with respect to youth, the Crown take publicly the position that they are now willing to re-open show cause hearings at any time that the youth is able to come up with an approved plan. Presently in the Young Offender's Act there are provisions for review of custodial dispositions. We would suggest that those provisions would be a good guide for when the Crown should agree to open a show cause hearing, that previously denied the youth release.

5(b) We recommend that the Crown publicly take the position that all conditions of release may be reviewed by the Youth Court. Young people's lives and the lives of their caretakers change frequently. Conditions should be changed and removed whenever that meets the goal of greater success.

6) We recommend that the province designate 16 as the presumptive age for which a young person may be transferred to adult court.

7) We recommend that the Provincial Attorney General immediately define the phrase serious bodily harm in the Three Strikes You're Out provisions in the Y.C.J.A. and that it be defined in such a way as to underline the government's commitment to only use that provision in extremely rare situations.

8) We recommend that when dealing with youth that all government institutions assume that their first responsibility is to encourage youth to become more effective in dealing with the general community. That's where a youth needs to be.

9) We recommend that there be immediately a commitment to a process that creates 'state-of-the-art' responses to those youth with brain injury of all kinds including as a result of alcohol. That response must include pleasant living conditions and probably a type of sheltered employment.