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Justice Institutions

JUSTICE INSTITUTIONS

INTRODUCTION

The goal of this Commission is to return justice to the community. It believes Saskatchewan is uniquely positioned to lead the country in bringing about a fundamental shift in how justice is viewed, both by those in the system and those affected by it. The Canadian justice system has often been viewed as essentially dealing with crime and punishment. It carries with it many negative associations. However, justice must be viewed as not only protection of society, but as an opportunity for creating positive societal foundations based on healing and harmony.

In this chapter we have focused on the courts and corrections for two reasons. First, in the community dialogues a number of concerns were raised regarding these areas. Second, these two institutions are well placed to support positive change in the lives of First Nations and Metis people with the use of compassionate and creative measures.

This chapter focuses on finding ways to improve the courts and corrections. If these institutions are to better respond to the needs of First Nations and Metis people in Saskatchewan they must incorporate their values.

It is important the Commission states that, however changed, the courts and corrections alone cannot achieve justice reform. A broad based and integrated effort is needed to deal with the underlying issues that lead people to criminal behaviour. Significant efforts and resources should be applied to preparing the community to take responsibility over its own justice issues. Although this report (and the interim reports) has drawn on the tradition and experience of First Nations and Metis communities, all people of Saskatchewan will benefit from the findings.

While the Commission recognizes the role of the court, it believes the courts and the criminal justice system ought to be seen as a last resort. As things currently are, the Commission approves of the use of the courts and corrections only after all other options have been found unsuitable. We stress that at every deciding point in the justice process a case should be assessed to determine if it could be shifted to community based justice.

> **We see the justice response as being, in a way, the last resort response to a lot of problems that build up, and people don't come into contact prior with the justice system, is more a symptom of a long path of problems. And so that causes us to think about the justice system with some limitations as to what we expect of it, because we don't, in the same sense I mentioned that we don't see social**

> **assistance as a solution to poverty, we don't think we see the justice system as a solution to the social conditions that lead people to come into contact with the justice system …** (Speaker, Saskatchewan Social Services & Human Services Integration Forum presentation)

A Vision of the Ideal

We believe the role of justice institutions must be reconsidered so that they may provide what communities need. They must develop alternatives that are aimed at meeting the needs of individuals and their families. Governments must look to healing citizens rather than imposing prison sentences. The courts and corrections should aim to be more meaningful to First Nations and Metis persons.

In several First Nations and Metis communities there are community justice processes, including community justice committees. The courts themselves should work more closely with these community efforts. However, in communities where no such system is in place, the courts should have the resources available to be able to give appropriate sentences.

Background

The courts and corrections – along with the police – have historically been viewed as making up the "justice system." As we have seen in several recent justice reviews there are legitimate concerns being raised by First Nations and Metis people about the justice system. Those concerns are often directed at these institutions. The Commission has heard the following in our dialogues across Saskatchewan:

> **My main concern is the lack of trust Aboriginal people have in the justice system. Rebuilding the trust is my main concern, because there's a lot of our Native children, a lot of Native families, I should say, moving into the cities and it's overwhelming, some of the situations that our Native children are getting involved in.** (Speaker, Metis Nation – Saskatchewan Eastern Region Community Dialogue)

> **I believe in the justice reform. I strongly believe that. But when we talk reform, we have to have our input. We have to say it like it is. We heard about our people thrown in jails because some of them didn't even know there was Legal Aid available, because some of my people don't have the money to hire a lawyer, people that live in Third World conditions that exist today, people that don't know they've broken the law because they can't read or write, and they go up and plead guilty. These are concerns we have.** (Speaker, Treaty Four Community Dialogue)

And obviously the system is not working. My son's been in trouble for about a year and a half and it's been adjourned and adjourned over and over and over again. They're overloaded with cases. Why don't they give the simple cases to, like what (E…) mentioned, you know, back to the — to us, at least we could try and help them out in that way. (Speaker, Pelican Narrows Community Dialogue)

And that's another thing that was really — it really hurt me just to see these prisoners, especially they were very young. They were getting punished the whole time and they looked at the courtroom and they looked at everybody as they were going out and their faces were sad. I can still see their faces when they were going out of the courtroom. (Speaker, Cote First Nation Community Dialogue)

The Commission agrees with the many people who have said the justice system is foreign to the beliefs, traditions and hearts of First Nations and Metis people. The Commission also agrees that the system of courts and corrections was imposed upon First Nations and Metis people without their participation. We also agree that there are many legal issues to be settled regarding the Aboriginal and Treaty rights of First Nations and Metis people that deal with justice and self-government. As we heard repeatedly, doubt and mistrust is widely felt.

The current justice system is not trusted or respected by many First Nations people because First Nations have had no say in its creation, no say in the development of policies or laws. First Nations have had to endure attitudes of the practitioners and more than any other group of people we are disproportionately affected by the system.

In terms of values, the use of the 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. (Speaker, FSIN Health and Social Development Secretariat presentation)

Why doesn't the Canadian criminal justice system work for Indian people? Because that's a system that was never created by Indian people. It was created for Canadian society without any consultation with the Aboriginal society. (Speaker, Regina Friendship Centre Community Dialogue)

Today we have the white man's law imposed on us. Many of my people don't know that law. We have illiterate people in

> **our communities that can't read or write, and we expect them to know provincial and federal law. We got a lot of work to do within our communities.** (Speaker, Treaty Four Community Dialogue)

Contributing to the lack of respect for the justice system is the alienation from the system felt by many First Nations and Metis people. Integrating First Nations and Metis values into court and corrections is an important step in dealing with this alienation. The Commission believes that such integration will result in enormous benefits for all.

> **First Nations cultures, while distinct from each other, share some common elements which are based on a philosophy or world view that is particular to First Nations. For example, children are the gifts of the Creator that are placed in the temporary care of the adults in the family, the extended family and the community to nurture. They also consider the individual as a whole, signified by a circle. The values of love, respect, honour, truth courage, humility and wisdom are included in that circle.**
>
> **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 justice considerably more importance is placed on restoring relationships and community harmony than on punishment. The teachings of the Elders about Creator's law, Grandfather's law and natural law are used to educate, guide, heal, restore and prevent offences.** (Speaker, Federation of Saskatchewan Indian Nations Health and Social Development Secretariat presentation)
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> **And a lot of times we convict people, we just send them away, we're not dealing with the root of the problem. And they come back to the community and it's the same cycle again.**
>
> **So our emphasis is on healing the wrongdoer, the victim, the community. Includes participation from both the victim and the community so that the wrongdoer is confronted by his wrongdoings. He hears and sees and feels the emotions of the victim, the community in regards to his actions, so that he's just not shipped away and he never has to deal with that.**
>
> **Like I said, we're trying to develop a process where it includes, it's inclusive of everybody, promotes reconciliation of the victims, restitution. Healing I think is the most important component of all of that. Healing the accused, healing the victim, and healing the community.**

> **Knowing that you have a safe community, that you can go home at night without anybody intruding, or without anybody coming in, or trying to threaten your family, or you as an individual.**
>
> **And the other thing within the traditional justice system that we have within our communities, our Elders use it a lot. Part of that is shame. It's in a positive way, in a constructive way, our Elders kind of use that. It plays an important role in the effectiveness of our First Nations approach, so that the accused, the wrongdoer remembers a lot of these things, so a lot of that guilt comes back to him when he hears a victim telling him some of the things that they went through, physical violence, or if it's B & E in regards to theft.** (Speaker, Prince Albert Grand Council Justice Commission presentation)

The historic fact is that First Nations and Metis people have not had a role in the development of the justice system, but nonetheless have had it imposed upon them. The Commission believes that the integration of First Nations and Metis values is needed to make the system work effectively.

While there is some movement in this direction, the inclusion of First Nations and Metis values is still at a very preliminary stage. It is important that the people of Saskatchewan, particularly those in courts and corrections, become fully committed to this goal. The shift will not be easy. No doubt every attempt to change things will be met with criticism and resistance. Change can only take place with the support of the governments of Canada, Saskatchewan, First Nations and Metis. Certainly, realizing the vision of safer communities is worthwhile. The consequences of inaction are clear:

> **Considering the population trends of First Nations communities, considering the size of the gap in life's chances, considering the current level of institutionalization, such as the high number of First Nations children in care and First Nations youth in the young offender population, the cost projection to sustain the current system is daunting. If you add to this list the growing complexity of needs such as developing a response to a large number of people disabled with brain injuries from trauma or substances related to FAS, and add the under-inclusiveness of children and adults, the price of the current system appears to be unsustainable.** (Speaker, Federation of Saskatchewan Indian Nations Health and Social Development Secretariat presentation)

THE CHALLENGE

For the purposes of this chapter, we are challenged to come up with suggestions for revising the roles of the courts and corrections so that all citizens of Saskatchewan, including First Nations and Metis people, might begin to trust them. Such a change is not possible unless we have mutual respect for our distinct values and cultural practices.

OPPORTUNITY FOR TRANSFORMATION

It was suggested to the Commission by some people that a solution might be a separate justice system for First Nations and Metis people. However, more often the Commission heard that Saskatchewan people, including many First Nations and Metis people, want to work together to improve the existing system.

What is needed is a focused effort by all residents to transform the current system to make it truly inclusive. The Commission believes it is possible to create a system that respects the language, culture and traditions of First Nations and Metis people. If change does not occur in the justice system, then implementation of a separate system is an option to pursue.

A) The Court Structure

Saskatchewan courts and the judiciary are independent of the government. Saskatchewan Justice provides only non-judicial administration and related services to the three levels of court in Saskatchewan through the court services branch.

The Provincial Court of Saskatchewan has limited authority. Administration and the appointment of judges are the exclusive responsibility of the provincial government. It may only hear matters related to statute law that are within its jurisdiction. It also has initial jurisdiction in criminal matters. The Provincial Court deals with the vast majority of criminal matters.

The Court of Queen's Bench is a court of original jurisdiction. The Court of Queen's Bench is a superior court, administered by the province but with federally appointed judges. Any matter may be heard in this court unless legislation specifically states that the matter must be heard in another court. Criminal matters can begin in Provincial Court and then be sent for trial in Queen's Bench.

The Court of Appeal is the highest level of court in the province. The Court of Appeal is provincially administered but presided over by federally appointed judges. Any matter from the lower court will eventually, if appealed, come before the Court of Appeal. Once the Court of Appeal delivers a ruling, the Court of Queen's Bench and the Provincial Court must follow it.

The Trial Process

All residents of Saskatchewan, as do all Canadian citizens, have the constitutional right to a fair trial within a reasonable time under section 11(b) of the *Charter of Rights and Freedoms*. Trials are conducted within procedural safeguards to ensure they are fair and do not compromise the rights of the accused.

Nothing in this report is meant to minimize the importance of trials. Indeed, the hearing of evidence and fact finding, which takes place during trials, is not realistic during the restorative justice procedures. This is why the offender must fully and voluntarily participate in the restorative justice process. Otherwise, it could be argued that restorative justice procedures infringe *Charter* rights.

Juries

Juries are an important part of the adversarial trial system and are used in criminal and civil trials. Each province has its own process of selecting juries. In Saskatchewan, the names of prospective jurors are selected at random from the province's computerized hospitalization records. As every resident of Saskatchewan has a hospitalization number, this makes it the least biased list of names available. Only the person's name and address are released from the records.

Several weeks prior to a trial, the sheriff's office in the judicial centre where the trial will be held creates a pool from which the jury will be chosen. Names are selected at random from within the judicial district where the trial is being held by Saskatchewan Health. Saskatchewan Health forwards the names and addresses to Saskatchewan Justice, and the Sheriff's Office mails out a summons to each prospective juror.

Relief from jury service must be made by submitting an Application for Relief from Jury Service to the sheriff at the judicial centre nearest to where the jury is to sit, within ten days of the opening of the court for which the person is summoned.

Those not eligible for jury duty include: police officers; employees of Saskatchewan Justice; reeves, councillors and mayors; judges, Justices of the Peace, coroners, lawyers (and individuals who have served in these professions in the past); people who are engaged in the administration of justice; members of a board of education, the conseils scolaires, a board of trustees of a school district; a member or officer of the Legislative Assembly; a member of the Privy Council, the Senate or the House of Commons; a spouse of any of the above persons; and persons who are legally confined in an institution or who are certified incompetent.

Jury selection takes place before the start of the trial. The names of all eligible persons are written on cards, which are placed in a box. The court clerk draws a card and that person is called forward. The lawyers for the prosecution and the defence have to decide whether they want this person. If either lawyer objects to a potential juror, the person is excused. If neither lawyer objects, the person is sworn as a juror. This continues until 12 jurors are chosen. Everyone else is excused.

This same procedure is used to select juries for any court business in the province, except for coroner's inquests. There are only six members of a coroner's jury. A recent change to section 12 of the *Coroners Regulations* makes it possible in certain circumstances to ensure that the jury be composed in whole or in part by persons of Aboriginal ancestry. It reads in part:

> **Juries**
>
> **12(1) Where, in the opinion of the chief coroner, the circumstances surrounding the death require the jury to be composed, wholly or in part, of persons of Aboriginal ancestry, the chief coroner may:**
>
> **(a) request from the person in charge of the register maintained pursuant to subsection 11(1) of** *The Saskatchewan Medical Care Insurance Act* **a list of names and addresses, in the number specified by the coroner, of persons who are:**
> **(i) registered Indians pursuant to the** *Indian Act* **(Canada); and**
> **(ii) members of an Indian band within the geographical area indicated in the request; or**
>
> **(b) request from the Indian band or bands in the geographical area specified by the coroner a list of names and addresses of band members in the number specified by the coroner selected from the band list by a method determined by the chief coroner.**

This provision has been used often throughout Saskatchewan when a coroner inquires into the death of a First Nations or Metis person. This system can be used in coroners' juries because they can only make recommendations, not findings of guilt or innocence or, in civil matters, findings of liability. Where similar provisions have been attempted for criminal trials, they have been struck down by the courts as being contrary to the *Charter of Rights and Freedoms*.

Despite the unbiased method of selecting juries, the Commission was told that First Nations and Metis people are not adequately represented on juries. In community dialogues and presentations there were suggestions that their low representation may be due in part to such things as lack of childcare and transportation to court or to a general feeling of alienation from the justice system.

Currently, the Saskatchewan jury system is under review. The Commission endorses the inclusion of First Nation and Metis perspectives in the review. The jury is an integral and complex part of the justice system requiring a careful balance between the rights of victims and the rights of the accused. The Commission believes that given the important role of juries in our justice system every effort must be made to ensure participation from First Nations and Metis peoples. This may include providing funds for childcare, arranging transportation, developing community awareness programs and amending the *Jury Act*.

Recommendation 6.1
This Commission recommends that the Government of Saskatchewan encourage and support the participation of potential First Nations and Metis jurors with the provision of resources for childcare and transportation where necessary.

Language in Court

The most basic obstacle to understanding and effectively participating in court proceedings (or any proceeding for that matter) is the use of language that cannot be understood by the parties involved. This is true if the vocabulary being used is too complex or unusual, and even more so if the proceedings are in a foreign language.

Section 14 of the *Charter of Rights and Freedoms* gives every Canadian citizen the right to an interpreter in a proceeding. In Saskatchewan, under the *Language Act*, residents have the right to court proceedings in either of Canada's two official languages. This legislation does not mention the use of other languages. However, it is the duty of the province and it is the policy of Saskatchewan Court Services to provide interpretation during a court proceeding in the language of any accused. This service is routinely provided in all areas of the province. There are, however, gaps in interpretation services and they are not always available in Saskatchewan judicial proceedings.

> We need to break that language barrier. There's people out there that don't understand what you're talking about when you talk to them in English. They say okay, and then you ask them the question in Dene, and they'll just keep on talking. (Speaker, La Loche Community Dialogue)

In this regard, the Northern Cree Court is a significant innovation that began travelling to court circuit points in October 2001. The Cree court is based in Prince Albert and travels to Pelican Narrows, Sandy Bay, Montreal Lake and Big River First Nations. The court is presided over by His Honour Judge Gerald Morin, a Cree member of the Cumberland House First Nation. The court party includes a court clerk, Crown prosecutor and Legal Aid lawyer. The entire court party possesses the ability to speak and understand Cree and English. Judge Morin allows all participants to speak either English or Cree.

The Commission attended Cree court in Sandy Bay and was impressed by the balance Judge Morin achieved in demonstrating the seriousness of the proceedings while ensuring that participants fully understood what was going on. People who have said they are now better able to understand and participate in the court procedure have praised the Cree court as a success.

The Commission heard many endorsements of the Cree court and appreciates there is a need to copy this innovative project in other parts of the province. It has also been suggested that courts should be developed to use other First Nations languages.

What I've encountered, I think what's more intimidating than anything, is the language that's used within the court system. I, myself, have had the opportunity to go out to some of the communities and brief them in regards to what the process is within the court system. In our own language, in my Cree language – I come from Waterhen Lake First Nation, an original member from there – to speak with our First Nations people and explain the process so they understand. I tell you, you can see a big difference in their face when they realize what the whole process is, as opposed to going within the court system and being fearful of not knowing what the process is, or not understanding the language that the courts, the Crown prosecutors, the lawyers use. (Speaker, Meadow Lake Community Dialogue)

A lot of the people like it because they can speak their first language when they go to Cree court. (Speaker, Pelican Narrows Community Dialogue)

Recommendation 6.2
This Commission recommends that the Cree Court concept expand both geographically and linguistically so that a First Nations or Metis person may attend court proceedings conducted in their own language.

Recommendation 6.3
This Commission recommends that all levels of court in Saskatchewan inform First Nations and Metis people appearing in court that they have the right to receive translation services, so that they fully understand the proceedings.

Legal Family Matters

Concerns were often raised about the high cost of travel, in time and expense, faced by northerners involved in Family Court cases. Provincial Court circuit judges travel throughout the North but are restricted in the family matters they can deal with. They only can deal with family law matters that fall within provincial jurisdiction such as child protection matters, family maintenance matters and some enforcement of maintenance order matters.

The Court of Queen's Bench is willing to travel to other points, but only if court facilities are renovated to accommodate the needs of the Court. Privacy is the most important issue in family law cases and, in their current state, court facilities in Northern Saskatchewan are inadequate.

Legal Aid in family law cases raises important issues for First Nations and Metis people. One is its availability; the other is the clients' faith in it. In Family Court matters both parties cannot have representation from the same Legal Aid office. The Legal Aid Commission says it is a policy to only represent one of the spouses from a Legal Aid office. However, eligibility assessments will be conducted on both spouses before one is sent to a lawyer in another office.

An approach that has recently developed as a restorative solution in the family law area is collaborative law. This is a non-litigation approach to problem solving. The Collaborative Family Lawyers of Canada website describes collaborative law as a cooperative problem solving process involving spouses and collaborative lawyers. Informal discussions and conferences are used to settle all issues.

For more information: www.collaborativelaw.ca

The goals of the collaborative process are to find and focus on common interests; understand each other's concerns; exchange information; explore a wide range of possible choices; and to reach solutions acceptable to both parties. It is especially effective in cases where the parties need to maintain a relationship for the benefit of the children. The parties and their lawyers take part in four-way settlement meetings. They work to establish agendas, set realistic deadlines for document exchanges, and create a safe, open, and fair environment for resolving conflict without litigation.

Collaborative law approaches might be a limited solution to the problems faced by people in Northern Saskatchewan without access to the Queen's Bench Court. It is possible that this method of conflict resolution could deal with all family law matters, other than child custody and actual divorces.

Recommendation 6.4
This Commission recommends that the Government of Saskatchewan gather representatives from the Court of Queen's Bench and the Provincial Court, together with at least one Metis and one First Nation northern representative along with representatives from the Government of Canada to explore ways to address a more satisfying and economically affordable solution to bringing family law matters to the North.

First Nations and Metis Participation in the Courts

The Commission heard that the Cree court is simply a Cree language court, and not a truly Cree court with a foundation in tribal law. There is some basis for this comment; however, it does not take into account either Judge Morin's background or his approach. Judge Morin's approach uses his experience, culture and traditions, along with his legal training and his experience sitting as a judge.

> **I know for me it's a dialogue that I try and maintain with some of the justice committees. When we go into different communities I meet with them. I meet with them in Pelican Narrows, Montreal Lake, I'm trying to do something in Big River, you know, to try and introduce that dialogue from that community that's out there, that's not in front of me in court. So it's important for me to make that extension of who we are in court.** (Judge Gerald Morin speaking at Stakeholders' Meeting)

This approach has legitimized community-based programming where the Cree court presides.

> **You know, the Cree court that's here now. I think it's a really positive step and I think we're going the right direction. And ever since we started Cree court, you know, from a professional point of view, my programming was increased. More people now start coming to my programs and, you know, I think they're starting to open up a bit. When I first started last year, before the Cree court last year, you know it was really hard to keep up with the programming because of the sparse number. Like sometimes I'd only have five people, sometimes I'd only have one, sometimes nobody would show up at all.**
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> **But now, ever since Cree court started, there's always a consistent number of people that always come to that program and, you know, in a way I'm very happy with the success of that program. And it's because, you know, I think the Cree court has – you know, gives people a better understanding about law and their court issues.**
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> **And I guess the other thing too is having an Aboriginal judge. When before they always seen a white judge, and they automatically think that's an oppressive, you know. Like, this person is always coming down here and telling us what to do, so, you know, we have to, you know, pretty much follow what he has to do even though we don't like it. But in a way, seeing an Aboriginal judge, they can – in some way they automatically have this idea that the judge does understand some of the situations that do happen on most communities.** (Speaker, Pelican Narrows Community Dialogue)

The Northern Cree Court Initiative included the following in its vision:

> **The Cree Court proposal is not a separate court system. It is essentially a creative enhancement to the current system with a restructuring of the Euro-Canadian approach to justice issues. The proposal focuses on three fundamental concepts: the appointment of an Aboriginal judge to preside over a reworked court established at a location in Northern Saskatchewan; consideration of the establishment of a Peacemaker's component integrated with the court and management of the administration of the court itself. While the approach to handling cases would be refitted to meet the needs of Aboriginal people, the Peacemaking component, emphasizing healing and community values, is what will set this court apart. But it requires a skillful Aboriginal judge to make the overall system work.** (Speaker, Saskatchewan Justice and Corrections & Public Safety presentation)

The Peacemaker element of the Cree court is an important innovation that connects the court with community restorative justice procedures. In this model the court is not involved in the peacemaking process. Instead it allows the parties to mediate the matter outside court and will accept the terms of the resolution. Prince Albert Grand Council mediation services often facilitates the process. This procedure allows for mediation of more serious charges, such as assault with a weapon, which would normally be outside provincial justice guidelines for alternative measures.

In the Tsuu T'ina Nation model, if it is decided a dispute will be best handled through the peacemaking process by the Peacemaker Co-ordinator, a talking circle rather than a trial ensues. The Peacemaker Co-ordinator assigns a Community Peacemaker who is then responsible for arranging a meeting where the victim, the offender and community members including Elders sit together to arrange undertakings for the offender to complete. Once such undertakings are complete, the matter is returned to the Judge, where the Peacemaker Co-ordinator reports on the activities. The crown prosecutor then assesses what has been done and, if satisfied, the charge is withdrawn.

The House of Justice paper included in Volume II of this Report, describes the peacemaker role as a link between the community and the court structure. Part of the role of a peacemaker may be carried out through the office of the Justice of the Peace. The proposed Justices of the Peace:

> would generally be resident in their community, but integrated with the court structure in a close relationship. Within this framework there would be a variety of JP levels and functions, but a key role for some would be as Chair of their community's justice committee. This would ensure that local justice issues received appropriate attention from knowledgeable persons skilled in community dispute resolution. They would facilitate restorative initiatives, supervised diversion programs and develop appropriate local mechanisms for dialogue about community/court concerns.

While the Cree court has demonstrated success in making court proceedings more widely available, to reach its full potential the Peacemaker function should be expanded, community involvement should be encouraged and community programs should be better funded. This Commission does not wish to dictate how community involvement in the court system should occur; that should be for each community to decide.

Recommendation 6.5
This Commission recommends that all courts be fully resourced by the governments of Canada and Saskatchewan to include the critical component of community involvement.

Recommendation 6.6

This Commission recommends that the governments of Canada and Saskatchewan, to ensure equitable and fair representation in the courts, appoint First Nations and Metis persons to sit as judges at every level of court within Saskatchewan.

The Commission was informed that the number of Aboriginal judges, Crown prosecutors and Legal Aid lawyers is low and that efforts are being made to recruit more First Nations and Metis people into these occupations. The full integration of First Nations and Metis people in all levels of court is essential. Every level of government should continue to encourage and fund First Nations and Metis people to attend law school and to complete all bar admissions programs so that they may practice law in Saskatchewan.

Court in the Community

A measure of community involvement by the court system is the number of Provincial Court points in First Nations and Metis communities. When a community has expressed willingness and has demonstrated to Saskatchewan Court Services that it is practical to hold Provincial Court on a reserve the proposal is usually accepted.

The willingness of the Provincial Court to respond to a request from a community was demonstrated following the Commission's first Interim Report. In the report the wish of Onion Lake residents to have court held once again on their First Nation was noted. Chief Judge Seniuk acted immediately and Court will resume shortly on the Onion Lake First Nation reserve.

However, concerns were raised about the limited access of First Nations and Metis people to court, particularly in the North. Often, there are difficulties in arranging for travel to the nearest court point. As well, the limited amount of time the court is able to sit in smaller communities and the resulting rushed pace is a problem.

The Commission heard that holding court in a First Nations community is very important given the circumstances of many First Nations people.

> **We do have court on-reserve; I think it's just a big advantage because now we're starting to see more fairness and equity. We do have probation coming here, and that has been for quite a few years, which is a big advantage because, you know, let's be honest, 80 per cent of our people are unemployed and live on $195 a month, and how do we honestly expect them to go to P.A. or Saskatoon?** (Speaker, Beardy's and Okemasis Community Dialogue)

The Commission encourages all levels of court within Saskatchewan to sit at First Nations and Metis communities where it has been formally requested and is broadly supported. Of course, it is essential that appropriate facilities be provided on a financially feasible basis. Contributing to the successful experience of the Beardy's and Okemasis First Nation was the fact that all concerned parties cooperated to create a suitable facility.

The Commission recognizes the need for more court facilities must be dealt with and that many of the current court points have inadequate accommodation.

> **This facility is extremely inadequate – and presents serious concerns regarding cleanliness; maintenance is poor and the regular noxious odour of natural gas causes serious health concerns. This can be a busy court point and court days can be long and difficult so that the inadequacies of the facility are exacerbated.** (Saskatchewan Court Facilities and Security Review Committee, 2001)

The Commission acknowledges that facilities must meet the standards set by Saskatchewan Court Services before a community can expect court to be held. It must also be recognized that it is not economically practical for the entire court party to travel to every First Nation and Metis community. The use of technology is permitted under the *Criminal Code*. Therefore, every level of government should work to provide video-audio linkages with the help of community justice committees and local police for first appearances, bail hearings, simple trials, appeals and other proceedings in places where court is simply unable to attend.

Recommendation 6.7

This Commission recommends that all levels of government encourage and promote Court points in First Nations and Metis communities where suitable facilities can be provided and maintained by these governments; in the alternative, these governments should begin to provide suitable video and audio links between inaccessible First Nations and Metis communities and the courts.

Expanding the Role of Courts to Include Restorative Justice

> **The purpose of a justice system in an Aboriginal society is to restore peace and equilibrium within the community, and to reconcile the accused with his or her own conscience and with the individual or family that has been wronged. This is a primary difference. It is a difference that significantly challenges the appropriateness of the present legal and justice system for Aboriginal people in the resolution of conflict, the reconciliation of offenders and victims, and the maintenance of community harmony and good order.** (Green, 1998)

And just as one person related to me this morning, it's very much of a challenge for anybody, especially if you're a victim of rape, for example, and having the perpetrator right next to you. There's no space there, and you can really feel for the victim in that situation. (Speaker, Sandy Bay Community Dialogue)

The Commission believes that it is essential to recognize the differences between the worldviews of First Nations and Metis people and those of non-Aboriginal societies. First Nations and Metis values should be incorporated into the operation of the courts. These values include restoring relationships, accountability, community involvement and community ownership. From this perspective the courts' role is to bring peace and balance to the community. (See Chapter 4 - Restoring Justice.)

The 1996 *Criminal Code* amendments allow for the use of alternative measures and conditional sentencing. Sections 716 and 717 allow alternative measures proceedings outside of court and accordingly are referred to as extrajudicial. (See Appendix 8.) As discussed in the chapter on restorative justice, these measures create useful alternatives to court procedures because they allow situations to be dealt with before charges are laid.

Alternative measures currently apply primarily to police and prosecutors as they consider alternatives to filing criminal charges. However, as mentioned above, if the policies and programs of the Attorney General of Saskatchewan are expanded and focused on First Nations and Metis communities, these provisions will become useful alternatives to court proceedings, even when charges are filed and court proceedings have begun.

Pre-charge or post-charge alternative measures can provide for responses that are entirely community based. On the other hand, conditional sentences are employed post-charge. These provisions allow for court supervision of community solutions. Section 742 of the *Criminal Code* provides for the use of conditional sentences as follows:

> **742.1 Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court**
>
> **(a) imposes a sentence of imprisonment of less than two years, and**
>
> **(b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2...**
>
> **the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.**

If the terms imposed by the courts in a conditional sentence are met, offenders are not imprisoned. Instead they serve their sentence in the community with conditions such as curfews and orders to refrain from alcohol. Such conditions often include attending spiritual healing ceremonies or alcohol treatment to assist in obtaining insight into the causes of the offending behaviour. If the terms of the conditional sentence are broken, the offender must return to court for a review. It could result in finishing the term in prison.

Community responses to criminal behaviour take various forms, depending on the charge, the offender and the needs of each community. The important thing is that, where possible, the matter is taken from the court system and returned to the community.

> **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 8 out of 10 youth and adults 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, Saskatchewan Justice and Corrections and Public Safety presentation)

The Saskatchewan justice system must be applauded for its use of alternative measures; however, more can be done. Excluding certain offences from this option may bar important opportunities for healing and rehabilitation.

The *Criminal Code* states that the fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and maintenance of a just, peaceful and safe society by imposing just sanctions.

Section 718. 2 provides a number of sentencing principles to be considered by the court including:

> (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender;
>
> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> (d) an offender shall not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> (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.

The sentencing amendments to the *Criminal Code* have placed an emphasis on decreasing the use of incarceration. As noted by the Commission in its first Interim Report, the Supreme Court of Canada in *R. v. Gladue* has described the 1996 amendment package as a totally new approach in criminal law reform:

> **With respect for the contrary view, we do not interpret s. 718.2(e) as expressing only a restatement of existing law, either with respect to the general principle of restraint in the use of prison or with respect to the specific direction regarding aboriginal offenders. One cannot interpret the words of s. 718.2(e) simply by looking to past cases to see if they contain similar statements of principle. The enactment of the new Part XXIII was a watershed, marking the first codification and significant reform of sentencing principles in the history of Canadian criminal law. Each of the provisions of Part XXIII, including s. 718.2(e), must be interpreted in its total context, taking into account its surrounding provisions.**

At sentencing in all levels of court, judges should be willing to allow and actively support community participation when possible. Section 718.2(e) of the *Criminal Code* and section 38(2)(d) of the *Youth Criminal Justice Act* state that in sentencing a court must take into consideration the special circumstances of First Nations and Metis offenders. Allowing community members to express their concerns and support is one means of doing so.

For judges to seriously consider community involvement in sentencing, the community must have adequate resources. This requires a shift in allocating resources, with a new focus on community programs and away from traditional institutions and imprisonment.

Recommendation 6.8
This Commission recommends that all levels of court be encouraged to use community based sentences for all offences (unless specifically prohibited by law) and that every level of government redirect resources to fund community based projects and help to facilitate community participation in sentencing.

A guiding principle in the development of community justice is that it be flexible. It is apparent that the efforts made by judges to involve communities are beneficial. The opportunity for success of community justice initiatives is boosted when judges are aware of each community's unique needs and goals.

As emphasized elsewhere in this report a movement by the courts towards community justice is only part of the solution in our complex social and economic situation.

> **Justice systems address symptoms, not causes, of crime and social disruption. Over the last three decades, there has been a growing dissatisfaction with the North American justice system's ability to reduce crime and social disruption. There has been a considerable degree of disagreement as to whether this failure is because the system is too punitive or is not sufficiently punitive. There is little disagreement, however, on the point that a very costly system is producing very unsatisfactory results. There is a danger, however, in assuming that community justice systems on their own can reduce crime rates and social disruption. Unless social and economic conditions are also addressed, a move to a community justice system can, at best, ensure that justice is administered in a more effective manner that is accepted as legitimate by the community.** (Manitoba Aboriginal Justice Implementation Commission)

For example, the Restorative Circle Initiative in Saskatoon is a pilot project with the court directing matters be dealt with in a circle format. This project began June 1, 2003, and has funding from Justice Canada and Youth Canada until March 31, 2005. The King George Community and School Association oversees it.

The Restorative Circles Initiative is designed to allow young persons to be held accountable for their behaviour and participate in community reintegration by building a team of family, volunteers and human service professionals. The Restorative Circles Initiative forums can be conducted by a judge or by one of the staff members of the initiative.

Therapeutic Court

The Commission's third Interim Report mentioned the concept of a therapeutic court. Therapeutic courts have been described to this Commission in the following terms:

> **In that part with the courts, the courts have led in a number of jurisdictions, and the federal government has even provided extra funds to try and develop this, with what are called therapeutic courts. Those could be drug courts, family violence – domestic violence courts, mental health courts. And in those courts the judges, in fact, have a far greater role than the traditional view that was expressed, and they do get very involved. There is a full resource team that is right closely associated to the court. The court is always involved in monitoring how that plan is working and, in fact, the experience so far is that that involvement, bringing the judge into that forum, is key. It is what is key to the success, and having it in a transparent place, the public courtroom where the public can see what's happening, and the end result is usually not jail, but that the plan is followed and it's almost like a graduation ceremony instead of a sentencing at the end, and there's a great deal of joy. And, say, in a mental health court, the psychiatrist is there. In the domestic violence or family violence court, the family is there. So these things are what many people consider to be the way of the future.** (Speaker, Saskatchewan Justice and Corrections and Public Safety presentation)

The Commission heard in an overwhelming number of presentations that charges of criminal behaviour in Saskatchewan are often related to alcohol addiction, drug use, families in crisis, family violence and an ever increasing number of children and adults with fetal alcohol spectrum disorders (FASD). The Commission is convinced that these problems should be dealt with in a therapeutic court where a judge can monitor rehabilitative treatment.

As noted in the Commission's third Interim Report, the North Battleford Domestic Violence Court is a project started by a Provincial Court Judge. Her Honour Judge V.H. Meekma has, through her own initiative, coordinated services available in North Battleford into a Domestic Violence Court. Judge Meekma's determined efforts are commended by this Commission. This innovative response that joins partners in justice reform is an example of a therapeutic court in Saskatchewan. The Provincial Court is responding similarily in Spiritwood, Saskatchewan.

Nevertheless, the Commission is frustrated with the lack of financial support for therapeutic courts by all levels of government. Without full financial commitment therapeutic courts in Saskatchewan could fail. An example of potential failure caused by lack of funding is the Circle Court project in

Saskatoon. It was created and designed with the direction of Her Honour Judge M.E. Turpel-Lafond. It was to provide a fully integrated, restorative response to criminal behaviour.

The Circle Court project envisioned participation of Elders and the community dealing with the causes of criminal behaviour in a manner respectful of First Nations and Metis cultures and beliefs. However, the co-operation of the departments of Learning, Health and Justice and the community resources needed for its success have not been supported by funding agencies. Resources should immediately be provided to ensure the Circle Court can operate as was intended.

Recommendation 6.9

This Commission recommends that a Therapeutic Court, preferably mobile, with the capacity to address issues such as alcohol and other addictions, fetal alcohol spectrum disorders, families in crisis and family violence, be immediately established and implemented in Saskatchewan and that new funding be provided specifically by all departments and levels of government, including First Nations and Metis governments, to facilitate an integrated response to the root causes of criminal behaviour.

In addition to establishing a thereapeutic court, the Commission encourages all levels of court in Saskatchewan to incorporate therapeutic approaches where feasible to promote successful outcomes.

B) Alternative Measures as a Framework for Community Justice

This framework explains how existing justice procedures, and in particular alternative measures, may be utilized to assist Saskatchewan people in the resolution of justice issues in their community. Alternative measures programs focus on handling criminal matters referred by police and Crown prosecutors pursuant to section 717 of the *Criminal Code*. Alternative measures offer the accused of a criminal offence the opportunity to take responsibility for their behaviour and to address the harm that has been committed by participating in a program that resolves cases within a community agency or with community participation.

Community justice programs may also participate in the provision of alternative measures programs, but perform a variety of other functions outside the formal criminal justice system, such as conflict resolution, public education and crime prevention.

Alternative Measures Provisions of the Criminal Code

As stated in Chapter 4, the sentencing provisions of *Criminal Code* emphasizes the use of formal criminal justice procedures only as a last resort once the protection of the public is satisfied. The *Youth Criminal Justice Act* contains similar provisions (see Appendix 9). Whether these provisions are classified as alternative measures, applicable to adult offenders, or extrajudicial measures, applicable to young persons, the result is the same: they provide the means to manage offending behaviour within a community.

Saskatchewan needs to increase these opportunities and make them readily available. There are five areas in the *Criminal Code of Canada* and the *Youth Criminal Justice Act* that should be developed immediately to give the alternative measures provisions full meaning:

1. Any program of alternative measures must be authorized by Saskatchewan's Attorney General, as set out in section 717(1)(a) of the *Criminal Code*; (section 10(2)(a) of the *Youth Criminal Justice Act* refers to a program of sanctions). This concept must be fully developed to allow First Nations and Metis communities the authority and resources to continue the development of effective community justice committees or other justice delivery vehicles so that they may be approved for a program of alternate measures.

2. The person authorizing the use of alternative measures should involve community members in this decision.

3. Alternative measures should not only be available to a person who accepts responsibility for the act or omission, but should also be available where a person does not contest the act or omission.

4. The availability of alternative measures should be voluntary but not be restricted by artificial government policy. Alternative measures must be available for all offences, where the protection of the public is addressed, with the exception of homicide.

5. The courts should use community justice vehicles for sentencing purposes when probation or conditional sentences are imposed. They should also be relied upon when developing and implementing release plans for inmates.

Alternative Measures Programs

Alternative measures programs are the vehicles that will allow community justice, as an alternative to the criminal justice system, to succeed. Before alternative measures programs can be used, the Attorney General of Saskatchewan must approve them. These programs should be defined broadly to allow a community to choose and develop an alternative measures program that best fits its particular needs.

Justice can be returned to the community through existing provisions of the *Criminal Code*. As recommended in this Commission's third Interim Report, establishing broadly based community justice initiatives must be given priority. Appropriate resources and authority are required to effectively deliver alternative measures programs. This Commission was told that any new justice measures must be built on mutual respect, working towards a common goal, and with First Nations and Metis participation and governance. These are the principles that must form the basis of an alternative measures program. (The principles of community-based justice were developed in the Commission's third Interim Report.)

Recommendation 6.10
This Commission recommends that the Government of Saskatchewan continue to work with communities, in collaboration with the Government of Canada and First Nations and Metis Governments, to establish community justice programs which will qualify as Alternative Measures programs under S.717 of the *Criminal Code of Canada*.

Authority to Decide on Alternative Measures

Both section 717 of the *Criminal Code* and section 10 of the *Youth Criminal Justice Act* authorize the use of alternative measures or extrajudicial measures. Once it has been established that the use of alternative measures is not inconsistent with the protection of society, a number of other conditions must be met. The authority to refer a case to an approved alternative measures program has conventionally been exercised by a police officer or a Crown prosecutor. However, there does appear to be some flexibility in the legislation as to who will have the authority to refer a case to a community based program.

Clearly the police and prosecutors should have a role in this decision. However, equally important, the community must be able to participate. For example, an Aboriginal liaison person (See Recommendation 5.9.2.) familiar with the community and the programs available should be given the opportunity to take part in the referral decision. If a community does not have an Aboriginal liaison person it could designate someone from the community justice program. The Aboriginal liaison person should also be able to apply for a review of any decision not to refer a case to the alternative measures program.

Recommendation 6.11
This Commission recommends that:

6.11.1 An Aboriginal Liaison person (or other approved community designate) participate in the decision as to whether to refer any alleged criminal behaviour to the community Alternative Measures program.

6.11.2 The Aboriginal Liaison person (or community designate) have the ability to apply to the Implementation Commissioner's Office to review a decision whether to refer alleged criminal behaviour to Alternative Measures. The Implementation Commissioner's Office must have the authority to access all material relating to this decision, to review it, and to advocate for the reversal of the decision where appropriate.

Broadening the Availability of Alternative Measures

Currently, section 717(1)(e) of the *Canadian Criminal Code* requires that the alleged offender " … accepts responsibility for the act or omission that forms the basis of the offence …" This provision is mirrored in section 10.2(e) of the *Youth Criminal Justice Act*. However, in many instances the offender may not be able to accept responsibility due to a lack of memory or the inability to meet the burden of accepting responsibility. Given the current provisions of the *Criminal Code*, there is less opportunity for offenders to deal with their offending behaviour outside the court process. The Commission recommends that both statutes be amended to deal with this.

Recommendation 6.12
This Commission recommends that the Government of Canada amend s.717(1)(e) of the *Criminal Code of Canada* **and S.10.2(e) of the** *Youth Criminal Justice Act* **to read as follows:**

> **(e) the person accepts responsibility for their actions or does not contest the act or omission that forms the basis of the offence that the person is alleged to have committed.**

Alternative measures must not be restricted by a list of offences that qualify for community justice. As the Commission has said, all offences must be eligible, with the exception of homicide.

Recommendation 6.13
This Commission recommends to the Government of Saskatchewan that all offences, whether Provincial Regulatory offences or *Criminal Code of Canada,* **including spousal assaults and excepting homicide, be eligible for Alternate Measures.**

C) Community Partnerships in Justice

As the Commission has indicated, conditional sentencing and probation are other areas where the community can take responsibility. Alternative measures are available at the start of the criminal process; however, conditional sentencing is available at the end. Both mechanisms allow the community to take control of offending behaviour. The community justice committee, or whatever other vehicle delivers community justice, should be central to alternative measures, probation, conditional sentencing and parole.

Sections 718 through section 742 of the *Criminal Code* deal with conditional sentencing. These provisions allow an offender to serve a sentence in the community. Similar community based sentences are available under section 42 of the *Youth Criminal Justice Act*. It is important that all governments strengthen and fund community based resources to facilitate both community based sentences for all sentences (unless specifically prohibited by law) and community participation in sentencing.

Recommendation 6.14
This Commission recommends that all levels of government work towards the closure of incarceration spaces and divert resources thus saved to community-based alternatives.

In some instances, the courts must separate offenders from the community by imprisoning them. Most of these offenders have definite release dates and reintegration can be planned. The Commission believes that these plans must include the community to which the offender will return.

The *Corrections and Conditional Release Act* allows for significant partnerships to be formed between Aboriginal communities and Correctional Service of Canada (CSC). One of the two purposes of the *Corrections and Conditional Release Act* is to assist the rehabilitation of offenders in their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community. Of particular note are sections 81 and 84 which contain specific provisions regarding the role of First Nations and Metis communities in both the provision of correctional services and parole plans of First Nations and Metis offenders. For instance, CSC is authorized to negotiate care and custody agreements with First Nations and Metis communities. Additionally, the Service is legally obligated to involve First Nations and Metis communities in proposing and carrying out release and reintegration plans for First Nations and Metis offenders who have expressed an interest in returning to their home communities.

Section 81 allows for the transfer of an offender to the care and custody of an Aboriginal community at any time during his or her sentence, from the date of sentencing to the date of warrant expiry. This can involve the supervision of offenders in such cases as day parole, full parole or statutory release. Correctional Service of Canada in *Enhancing the Role of Aboriginal Communities Booklet* provides four categories of the types of services that can be provided under section 81:

1. The transfer of an offender to an Aboriginal community under a Section 81 Custody Agreement;

2. The operation of an urban, or rural-based facility designed for Aboriginal offenders, to which more than one offender may be transferred or may reside while on conditional release (e.g., a halfway house, a healing lodge, etc.);

3. Parole supervision or services offered in the Aboriginal community or an urban centre; and

4. Correctional services delivered within federal institutions or by community parole offices.

The first principle governing the application of section 81 is: "The protection of society and the safety of the community are paramount." To satisfy this principle, CSC emphasizes that any risk presented by the offender must not exceed what can be safely managed by the community.

Section 84 of the *Corrections and Conditional Release Act* requires Correctional Service of Canada to seek the community's involvement when an offender expresses interest in returning to an Aboriginal community. Adequate notice of the inmate's parole application must be given. CSC will assess the needs of an offender who wishes to correct his or her behaviour and the offender will participate in developing a Correctional Plan. The Aboriginal community must be provided the opportunity to propose a plan for the inmate's release to, and integration into, the Aboriginal community. In addition to specifying programs and activities that the offender will pursue, the plan will outline the community's role in ensuring that his or her reintegration is successful.

An essential component to this section 84 of the *Corrections and Conditional Release Act* is the identification by the community of the resources available in their community that will facilitate a safe release and continued law-abiding behaviour in the community. CSC suggests that consideration may be given to: programs or resources available in the community, such as Elders, Native Alcohol & Drug Addictions Program worker, Mental Health workers; employment opportunities or other options in meeting the offender's financial needs; living arrangements; identification of possible community support people; concerns regarding any victim issues; monitoring the offender's behaviour; and, the expectations of the community with respect to the offender's behaviour in the community.

CSC notes that it is important for it to have a contact person in the community who will be responsible for coordinating the development of release plans. This person or group must be authorized to speak on behalf of the community. For example, these people may be involved in community justice communities, or they may be the Justice Worker.

These sections provide an opportunity for communities to play a greater role in correction services. Such undertakings, however, require that the offender, CSC and communities have an effective working partnership and the resources available to ensure the development of long-term success.

Recommendation 6.15

This Commission recommends that adult correctional centres, youth custody facilities, and Correctional Service of Canada work cooperatively with community justice programs, Probation Services and the offender in the design and implementation of reintegration plans.

Community Justice Committees

Community Justice Committees (CJCs) are responsible for community participation in the justice process in some locations. These committees are usually made up of several volunteers from the community who work to provide justice services such as accepting alternative measures referrals in many rural communities and assisting justice workers in community justice programs operated by First Nations and Tribal Councils.

> **The one thing that I think has been very positive that has happened in a number of communities have been the formation of the community justice committees that have been established at the community level to be able to deal with programs and diversionary kinds of activities, particularly for first time offenders or for people whose offences are deemed to be such that they could be dealt with outside of the courts.** (Speaker, Metis Nation – Saskatchewan Eastern Region (Melfort) Community Dialogue)

The Commission recognizes the Prince Albert Grand Council's community based team approach as an example that encourages partnerships and increases the community's ability to respond to justice issues.

CJCs may handle cases in which the law has been broken and/or perform advisory, public education and crime prevention activities. The legal basis of a committee's work with youth aged 12 to 17 inclusive is Section 18 of the *Youth Criminal Justice Act* and the *Youth Justice Administration Act*. The legal basis for a CJC's work with adults is through a service agreement with Saskatchewan Justice and Section 717 of the *Criminal Code*.

It is possible that with more funding and support Community Justice Committees could play a much more significant role in the justice process. From pre-charge diversion to sentencing, the committees could anchor all restorative justice. They could work with youth and families in schools and create a way to supervise diversion projects, alternative measures and conditional sentences. They could also coordinate and assist with activities such as sentencing circles and community-assisted hearings.

The Commission was told that Community Justice Committees have already made significant contributions to the justice landscape in Saskatchewan. However, the Commission is also aware that in some cases, due to lack of funding, they have been unable to make a consistently forceful contribution. Each committee should have at least one full time employee to oversee its activities and to act as the point person for justice concerns. Just as we cannot expect lawyers, judges, police officers or probation officers to volunteer their time, it is not right to ask members of these committees to work without pay. We would hope that a level of remuneration would contribute to the availability of stable and long-term programming.

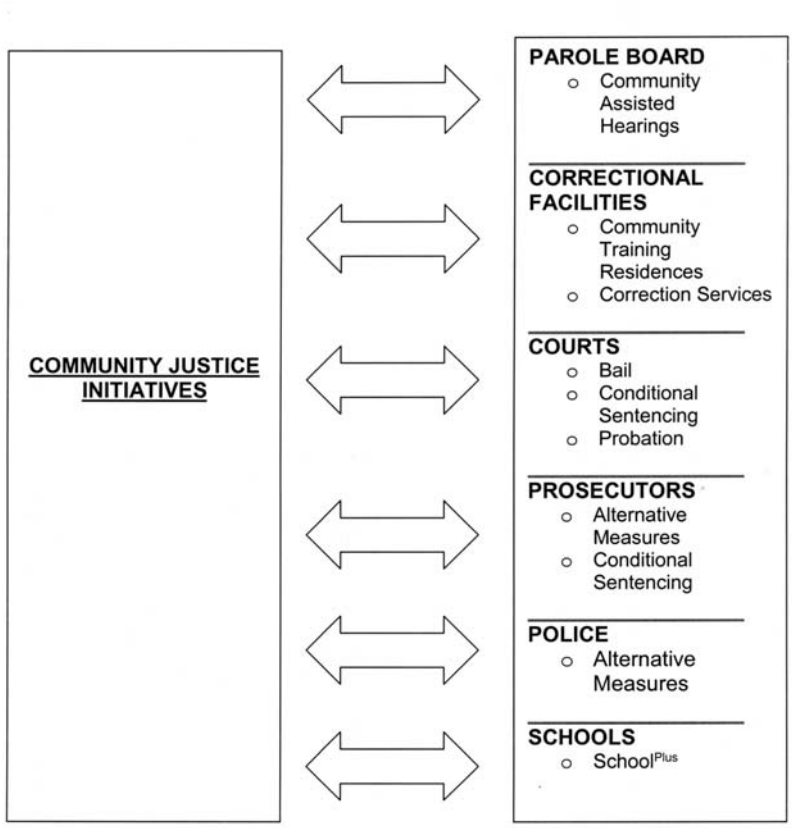
Recommendation 6.16
This Commission recommends that:

6.15.1 Where requested by the community, all levels of Government should assist in the establishment and funding of Community Justice Committees.

6.15.2 Members and employees of Community Justice Committees be appropriately remunerated.

The Justice Partnership

The Commission believes strongly in the development of reciprocal relationships between justice institutions and communities. Every step in the justice process should be marked by consultations with each other. Again, we reiterate that consideration must be given to referring parties to community based justice programs whenever possible.



D) Lawyers in the Courts

An overwhelming majority of criminal charges, approximately 98 per cent, are resolved in the Provincial Court of Saskatchewan. According to Saskatchewan Justice, in 2002-03, the Provincial Court presided over 27,463 cases. On average, for every case there are two charges, for a total well above 50,000. Those charges were dealt with by 47 Provincial Court judges sitting in 13 permanent court locations and 77 circuit court points throughout the province. Some of these circuit points are in remote locations such as South End, Fond du Lac, Black Lake, La Loche and Sandy Bay. Approximately 152 lawyers work for Prosecutions and Legal Aid in Saskatchewan.

Clearly, these individuals face a staggering workload. With the number of cases it would be difficult to keep up with their most basic job requirements, let alone apply innovative restorative justice concepts.

Crown Prosecutors

The size of the Public Prosecutions Branch has doubled in the last 15 years. In 2002, 80 Crown prosecutors in Saskatchewan operated out of 11 offices. Saskatchewan Justice employs them directly. Crown prosecutors are responsible for all *Criminal Code* prosecutions, whether they are resolved by guilty plea, trial in Provincial Court or Queen's Bench, or through some other measures.

Prosecutorial Discretion

After a matter comes to the attention of the police and their investigation is complete, a decision must be made. Police may lay charges within their own discretion, and prosecutors then review the charges by way of a post-charge review. The police may also bring investigation results to a Crown prosecutor who decides whether to proceed with criminal prosecution. This evaluation involves three criteria:

1. Does the investigation provide sufficient evidence of each element of the offence?

2. Does the strength of the evidence suggest there is a reasonable likelihood of conviction?

3. Does the public interest require that a prosecution be conducted?

The third criterion allows individual prosecutors to apply their own discretion. Public Prosecutions indicated to this Commission that they are willing to refer more charges to restorative justice initiatives. However, prosecutors believe the services to initiate and complete alternative measures are limited or inadequate.

The Commission agrees with Crown prosecutors that alternative measures, to be effective, must be meaningful for both the victim and the offender. It is of the utmost importance that any agreement reached between victim and offender be implemented or the process will break down. It is at this point that lack of

resources has a negative result. Often there is a lack of community assistance for the offender to complete the agreement. This prevents the implementation of healing plans and can lead to charges being re-laid or to new administrative charges for violating undertakings to the court.

Though community resources are limited, prosecutors must be encouraged to explore all options that may be available within the community. Prosecutors, police and legal aid lawyers should be encouraged to meet with the various community agencies to establish and maintain relationships with the community based resource providers.

Recommendation 6.17
This Commission recommends that a comprehensive list be created, and regularly maintained, of all community based justice services available by the Government of Saskatchewan. This list should be provided to all prosecutors, legal aid lawyers and private defence counsel.

In Prince Albert a pre-charge screening project has been established as a pilot project. It applies only to Prince Albert Police Service files. Essentially, it has police bringing an investigation file to the prosecutor before laying charges. The prosecutor reviews the file, and recommends what, if any, charges should be laid. There is some resistance from police to this screening as they view it as interference in their role. However, the Commission views the input of a legally trained person and representatives from the community as necessary in deciding to lay charges.

The Commission understands the cost implications of pre-charge screening across the province. However, the Commission believes that this is an excellent model, which is being used in other jurisdictions, and should be implemented across Saskatchewan. Pre-charge screening also provides an opportunity for the Crown prosecutor to review the police officer's decision regarding alternative measures. (See Chapter 5 – Policing.)

Recommendation 6.18
This Commission recommends that a pre-charge screening process with community involvement be immediately implemented throughout Saskatchewan by the Government of Saskatchewan. As part of pre-charge screening, Crown prosecutors should be instructed specifically to consider whether the matter in question could be referred to a community-based justice initiative as an alternative to Court.

Saskatchewan Legal Aid Commission

In 2002, the Saskatchewan Legal Aid Commission employed 72 lawyers. Saskatchewan Justice provides an annual grant to the Commission. The federal government shares the cost of legal aid adult and youth criminal matters. As noted previously, Legal Aid also provides services for family legal matters. Legal Aid is extended only to persons and organizations that are unable to pay for legal services. The vast majority of defence lawyers who appear in Provincial Court are from Legal Aid.

The Saskatchewan Legal Aid Commission and people in northern communities identified issues that arise from Legal Aid lawyers serving clients over long distances.

> **The Legal Aid system just doesn't work in Northern Saskatchewan. The Legal Aid Lawyers don't even spend enough time consulting with the individual that is going to court. They come to court, well, you've got maybe 40-50 people that are going to court, got to see them before they go to court, they got maybe two, three minutes, maybe five minutes, that's the most he can do. A lot of people are choosing not to deal with, to access Legal Aid. They're just speaking on their own.** (Speaker, Beauval Community Dialogue)

> **The Saskatchewan Legal Aid Commission has 15 offices located in 12 communities. Currently, there are 66 drive-in court points and 13 fly-in points. The lengthy travel distances for court officials, lawyers and clients hamper the ability of the lawyer and client to discuss matters face to face. As all legal aid clients are poor, many clients do not have vehicles nor drivers' licences and there is little public transportation available in rural and remote areas of the province. Many clients do not have access to telephones nor long distance privileges. All legal aid offices have toll-free lines, but this does not alleviate the lack of access to private phone conversations in many remote and rural communities. The distances between legal aid offices and the clients are felt more profoundly by women clients who may have few options for childcare.** (Speaker, Saskatchewan Legal Aid Commission presentation)

Legal Aid lawyers should be given time to travel to communities in advance to conduct client interviews and prepare cases. It is important for Legal Aid to be more visible in the communities as this could strengthen its level of credibility.

> **We need more time with our clients, we really do, and we recognize this. It's really frustrating for us to deal with clients that we don't have enough time to spend time with. And the contact problems are astronomical. We're just too far away. It would really be nice if there was enough funding to either hire more staff to be able to come out on a more frequent basis, have less of a caseload, so that in an area they're getting to know the community.** (Speaker, Onion Lake Community Dialogue)

During the community dialogues problems in Legal Aid services were pointed out. Facilities are not available for private client interviews. There are no specific times and areas for residents to inquire about family law matters. Information about alternatives to the court process is not on hand.

> **When I've seen the lawyers and judges come up, I have not seen a lot of privacy, and I have only seen them come up with criminal matters. And to me – see, I know a lot of people here as people, real people, and I've had people come to me, men and women, come to me over financial matters, come to me over forms and legal forms that they need to deal with, come over to me over potential bankruptcy and ask for my advice. There is not the time, or the person, or the privacy on those court days to deal with those issues. And there are real people living here, with real problems, not just victims and not just perpetrators.** (Speaker, Black Lake Community Dialogue)

Recommendation 6.19

This Commission recommends that the Saskatchewan Legal Aid Commission create First Nations and Metis articling positions and actively recruit First Nations and Metis lawyers.

Recommendation 6.20

This Commission recommends that the Government of Saskatchewan provide a toll free telephone line where people can get reliable, up-to-date information on family law matters.

Recommendation 6.21

This Commission recommends additional funding be provided to Saskatchewan Legal Aid Commission to hire more lawyers and provide broader legal services.

E) Corrections

> **Let's talk about corrections. Corrections doesn't exist in Saskatchewan. There's incarceration; there's no corrections. They used to have workshops at the Correctional Centre where people used to be able to take trades. Today you go out there and you cut pallets for IPSCO. I know from experience. I have been through the system. I have suffered through the system and I still suffer for being a businessman and being an Aboriginal at that. It makes it very tough.** (Speaker, Regina Friendship Centre Community Dialogue)

Corrections includes imprisonment, parole supervision, probation and conditional sentencing. The primary objective of corrections is to encourage an end to criminal behaviour, either in a community or institutional setting. In some instances the offender must be separated from society for its protection.

Saskatchewan Corrections and Public Safety's mission is to promote safe communities by providing a range of controls and reintegration opportunities for offenders. The federal C*orrections and Conditional Release Act* states:

3. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by

(*a*) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and

(*b*) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

The Commission believes that at both the federal and provincial levels, the correctional system must continually reduce the number of beds available and transfer these resources to community programming.

Imprisonment

On any given day in 2001 in this province, one in seven First Nations and/or Metis men and one in fifty First Nations and/or Metis women were under the supervision of provincial and federal correction authorities. (Supervision includes probation, conditional sentences, remand, sentenced custody and parole.) As stressed in Chapter 9 - The Benefits of Change, imprisonment is not a cost-effective response to crime. Given Saskatchewan demographics and current crime statistics it is apparent that in the next generation dealing with criminal behaviour will become cost prohibitive unless significant change in the criminal justice system occurs.

Myth: Imprisonment Reduces Crime

In May 2002, the Solicitor General of Canada investigated whether imprisonment reduces crime. A review, by P. Smith, C. Goggin and P. Gendreau, was done of 111 studies involving 442,000 offenders sentenced in a variety of ways. The conclusion was that harsher punishment did not reduce future criminal acts. In fact, harsher punishment actually increased chances that offenders would commit an offence again.

Imprisonment will not reduce crime. This has been proven through research and the failure of Saskatchewan's "get-tough" practices. Saskatchewan incarcerates more youth per capita and still has the highest crime rate in Canada. Politicians, judges and court system participants must provide accurate information to the public about the failure of imprisonment as an effective deterrent to crime.

> **One of the biggest barriers to overcome is the false belief among the public, politicians and even some criminal justice officials that tinkering with penalty levels or other parts of the system will improve community safety in Canada. Accurate information which contradicts this view must be made known, without discounting people's legitimate concerns.** (The Church Council on Justice and Corrections)

Young people in trouble with the law have been verbally attacked by politicians of virtually every stripe and ideology. What's missing from the inflamed rhetoric is any credible evidence that harsher punishment will create the positive, contributing young citizens we all want and hope to see. Amid the many calls to get tougher, where do we find the benchmark for how tough is tough enough? (Macrae, 2000)

> **There's a growing awareness that imprisonment should be reserved for offenders who pose the greatest risk to society, while low-risk offenders are being managed through community-based programs and supervision. Reducing the reliance on incarceration can only occur if there are adequate, safe and appropriate ways of managing lower-risk offenders in the community. The right type of intervention is critical. Inappropriate intervention or sentencing offenders without providing the right interventions does not reduce re-offending**. (Speaker, Saskatchewan Justice and Corrections and Public Safety presentation)

Recommendation 6.22

This Commission recommends that a public education campaign be designed and implemented by all levels of Government directed at providing accurate information on the benefits of non-custodial alternatives to imprisonment and re-integration into the community.

The Commission was struck by the concern raised in the northern Community Dialogues about the negative effects of holding or imprisoning people at a great distance from their communities. We note that communities want facilities that are accessible to family and community members. This is necessary to ensure offenders have the best opportunity to rehabilitate and then reintegrate with their families and communities.

> **I know how it feels to have penitentiary doors close behind you when you walk in. Welcome to the world of loneliness. I know how it feels when my little daughter came with my wife to visit me when I had four years to go. "Can Daddy come with us?" How can I go? I have four years, still got four years to go.** (Speaker, Black Lake Community Dialogue)

When First Nations and Metis offenders are imprisoned it is important that their right to take part in spiritual programming is honoured. The Commission believes it is important that First Nations and Metis people have access to Elders and traditional ceremonies and are also able to seek the support of other religious faiths.

Recommendation 6.23

This Commission recommends to Correctional Service of Canada, Saskatchewan Justice and Corrections and Public Safety, that access to cultural and spiritual programming, whether traditional or religious, be made more available to First Nations and Metis people who are incarcerated in Saskatchewan.

Recommendation 6.24

This Commission recommends to the governments of Canada and Saskatchewan that more resources be provided to community service providers to develop and operate programs designed that aid offenders with their transition into the community when they are released from prison institutions.

It was indicated to the Commission that more assistance must be made available to men to make a satisfactory transition from jail to community.

> **Some have been in jail a long time (6 months or more). Life on the street can be stressful on someone fresh from jail. A pre-release program that starts a week before release and continues a week after might help. It would deal with temptations and sour relations with people. Job searching and job set-up. Resume workshops.** (Written submission from inmate at Saskatoon Correctional Centre)

The Commission believes it is of utmost importance that substantial community programming be established to assist First Nations and Metis men and women released from prison. The Commission has heard and believes that if there were stronger support there would be fewer relapses.

> **The long accepted practices of First Nations peoples throughout the world are recently the focus of many studies which confirm that the experiences of expressing one's self and culture through forms of creativity, sacred symbols and rituals are profound contributions to well-being on all levels. The power of story and music and dance are taken for granted in First Nations cultures yet are not the focus of many of the opportunities offered to inmates.** (Jevne, 2004)

Within the federal system, offenders who have been detained until the end of their sentence because of violence in their criminal history are not permitted, by legislation, to leave the grounds of institutions for First Nations and Metis healing ceremonies, such as the Sun Dance Ceremony.

A request was made to the Commission to recommend that the *Corrections and Conditional Release Act* be changed. In the meantime, if an offender involved in cultural programming in an institution has the support of the Elders and the warden, will be strictly supervised during the absence (usually no longer than five days) and has the support of the National Parole Board, the NPB should be able to request that the offender be considered for medical leave to attend healing ceremonies. The Commission concurs with the sensibility of this request.

Recommendation 6.25

This Commission recommends to Correctional Service of Canada that, prior to a change in legislation, and given the healing nature of ceremonies, medical leave be granted to detained offenders to attend spiritual ceremonies outside the institution grounds for the purpose of healing if an offender has been involved in cultural programming in the institution, has the support of the Elders and Correctional Service of Canada, will be strictly supervised during the absence and has the support of the National Parole Board.

Imprisonment of Women

The imprisonment of women has serious effects on First Nations and Metis society. Historically, the number of women in prison is lower than men. However, when the Commission toured Pine Grove Correctional Centre for women in Prince Albert, the shortage of resources and programming was evident. The Commission accepts the suggestion that the programming needs of imprisoned First Nations and Metis women must immediately be made more focused and available.

> **Women that are serving a sentence in a correctional institution should be provided with programs that will benefit them when they return to the community. Emphasis needs to be on the needs of the women, not on the numbers of people that can attend a program. If a program will benefit a small group then it needs to be provided to them, either in the institution or more beneficially through partnering in the community. Women can leave the institution to go out to community programs and groups. The payoff may be fewer women returning to prison.**
>
> **Why not encourage women to use their time of incarceration as a time to learn new skills? If a woman could come out of jail with a skill that would allow her to find employment, it would be highly unlikely that she would have to commit property-based crimes.** (Speaker, Elizabeth Fry Society presentation)

The Commission understands the high turnover of offenders at the Pine Grove Correctional Centre, along with a shortage of funding, makes the continuity of programming difficult. However, it believes resources must be made available to facilitate programming and family interaction for women serving sentences.

Recommendation 6.26

This Commission recommends that Pine Grove Correctional Centre continue and expand its work with community agencies to provide programming which addresses the distinct needs of women in prison institutions and that the resources be available for them to do so.

Okimaw Ohci, a women's facility on the Nekaneet First Nation in the Cypress Hills near Maple Creek, can accommodate 30 women. They are mostly federal offenders serving sentences of two years or more and have been classified as minimum or medium risk.

All female offenders who qualify may apply to this healing lodge under condition they will accept First Nations and Metis culture, spirituality and healing practices. Okimaw Ohci uses Elders in planning and implementing healing strategies. The use of culture is applauded.

> **I really am looking at this in a way that instead of incarcerating women with children that maybe we could have an apartment block or housing where these women with children could go to serve their time. At least then they would be kept with their families and their children would continue with the bonding.** (Speaker, Central Urban Metis Federation Inc. presentation)

Community members and inmates told the Commission that children are profoundly affected when their mothers are imprisoned. The Commission believes alternatives are needed, in appropriate cases, for women with children to enable development of healthy family relationships and enhance rehabilitation.

Several times inmates expressed exasperation and disappointment that the Federation of Saskatchewan Indian Nations and the Metis Nation – Saskatchewan seemingly forget about them once they are imprisoned.

Recommendation 6.27
This Commission recommends that consideration be given by the Federation of Saskatchewan Indian Nations and Metis Nation - Saskatchewan to develop and deliver programs dealing with the effect of parental incarceration on children and the corresponding stresses of separation and reunification of families.

Young Offenders Programming

The Commission toured the following facilities for detaining youth in Saskatchewan – Paul Dojack in Regina, North Battleford Youth Facility, Yarrow Youth Farm near Saskatoon, Kilburn Hall in Saskatoon and Drumming Hill Youth Facility in North Battleford. Young offenders programming must focus on reintegration of youth into the community while making sure proper education and support are present there. Family involvement is to be encouraged.

> **There is no reintegration process after the youth are released from custody. The ball is dropped by both the justice system and society. There's no bridge between the two and families sometimes see incarceration as a good thing when there is a lot of disruptive behaviours with the**

> **youth. The families can settle down again, there's peace. There's no support for that family when the youth comes back. The youth senses that, they feel that, the alienation, that they're not welcome, that they're labelled and there's no real supports in the community to deal with that.** (Speaker, Saskatchewan Native Theatre Dialogue)

Recommendation 6.28
This Commission recommends to Corrections and Public Safety that plans for reintegration into the community be created as soon as youth are admitted to youth facilities.

The Commission endorses the principles of the *Youth Criminal Justice Act*, that youth should move from custody to community as quickly as possible. However, unless significant resources are devoted to community support, community activities and community supervision, the *Youth Criminal Justice Act* will fail many First Nations and Metis youth. Saskatchewan cannot afford the human or social costs of such failure. All levels of government must give priority to funding the ideas in the *Youth Criminal Justice Act*.

Recommendation 6.29
This Commission recommends that all levels of government immediately design and implement a funding strategy to fully resource the provisions of the *Youth Criminal Justice Act*, particularly those provisions that address community supervision of youth.

Community-Based Corrections

Community Training Residences are an example of an alternative to imprisonment. They provide a residential environment for offenders who are found by Saskatchewan Corrections and Public Safety to be in need of residential supervision while taking part in some form of community programming or employment.

An alternative to imprisonment may be to expand the number and role of Community Training Residences. This would allow offenders to remain in their communities to build positive relationships with their families and others. Addictions and culturally relevant programs could be offered, not only to the offender, but also to families. It would allow for programming to address specific needs.

National Parole Board

The National Parole Board is an agency in the federal ministry of the Solicitor General with exclusive authority under the *Corrections and Conditional Release Act* to grant, deny, terminate or revoke parole, or to detain offenders who are subject to statutory release.

The National Parole Board is directed by the *Corrections and Conditional Release Act* to make conditional release decisions for offenders in federal and territorial institutions. The Board has five regional divisions similar to those of the Correctional Service of Canada. The Prairie region consists of Manitoba, Saskatchewan, Alberta and the Northwest Territories. The Regional National Parole Board handles provincial cases, as there is no provincial parole board for Saskatchewan.

Parole is a form of conditional release from prison, which permits offenders to serve a portion of their sentence in the community, providing they abide by the conditions of their release. There are four types of conditional release under the *Corrections and Conditional Release Act* – temporary absences, day parole, full parole and statutory release.

Recommendation 6.30
This Commission recommends that the Government of Canada appoint additional First Nations and Metis persons as members of the National Parole Board.

Probation

Probation is a sentence most often imposed for less serious offences. It requires a person to obey certain conditions. It does not necessarily require a fine or time in jail. Rather, the convicted person must obey certain requirements imposed by the court for a specified period. The *Criminal Code* lists mandatory conditions of a probation order and optional conditions that may be imposed in ss. 732.1(2) and 732.1(3). If the offender does not follow through on the imposed requirements a charge of breach of probation can be laid.

The *Criminal Code* allows for probation in three situations. A judge may suspend a sentence and place an offender on probation as long as there is no minimum penalty for the offence under section 713(1)(a) of the *Criminal Code*. A judge may impose probation in addition to a sentence that does not exceed two years. As well, if a person is serving an intermittent sentence a probation order is in force during the time spent outside custody.

Recommendation 6.31
This Commission recommends that an evaluation of probation and community justice services be undertaken to ensure such services are meeting the needs of individuals and communities.

Conditional Sentences

When a court finds a person guilty of an offence, the person may be sentenced to time in prison or be allowed to serve the sentence in the community as part of a conditional sentence. During a conditional sentence, the offender is supervised and must follow the rules set by the judge or risk going to prison. A conditional

sentence is really a prison term that the offender is allowed to serve in the community. An offender who does not follow the court's conditions will be brought back to court and be ordered to serve the rest of the sentence in prison.

A judge may give an offender a conditional sentence if the *Criminal Code* does not set a minimum prison term for the offence and if the judge decides the sentence should be less than two years. Also, the judge must be convinced that allowing the offender to remain in the community is not a danger to the public and believe that a conditional sentence is consistent with the sentencing objectives set out in section 718 of the *Criminal Code*.

When offenders are sentenced to conditional sentences they must obey a number of conditions. The offender must be of good behaviour, go to court when required, report to a justice system supervisor regularly, stay in the area under the court's authority and get written permission to travel outside it, and inform the court or supervisor before moving or changing jobs.

In addition, a judge can tailor the sentence to the needs of the offender, the victim and the community by setting other conditions. For example, a judge might require the offender to pay the victim restitution, make other reparations to the victim or to the community, participate in a treatment program (alcohol, drug or anger management), provide support for any dependents, do up to 240 hours of community service work, or respect a curfew where the offender has to remain at home except to go to work or to other approved activities.

As noted in Chapter 4 - Restorative Justice, the Commission was frustrated to hear of the number of new charges that result from violations of bail or other release or sentencing conditions. These, in part, account for the numbers of youth placed in remand. System generated charges should be dealt with outside court by an Elder led team. These teams would monitor youth bail conditions and probation orders, particularly in urban centres. (See paper by Kearney Healy in Volume II of this report.)

Recommendation 6.32
This Commission recommends that the options of alternative measures, bail, probation and conditional sentences be employed instead of the use of remand and incarceration wherever possible.

Recommendation 6.33
This Commission recommends that Bail officers, Probation officers and Conditional Sentence Supervisors be scheduled so that their services are available on a 24-hour basis.

Conclusion:

The Commission believes that the 1995 *Blue Sky Report on First Nations Justice Development in Saskatchewan* was correct in its assessment of Saskatchewan's potential for justice reform. In this report prepared for Saskatchewan Justice, Her Honour Judge Mary Ellen Turpel-Lafond (then a professor and lawyer in Saskatoon), stated:

> **I cannot emphasize enough in this report how unique and significant the opportunity is for meaningful change in the Province of Saskatchewan. I have worked at the national level and in other provinces on these issues and it is my firm belief that all of the elements are present in Saskatchewan to creatively and successfully address the problems which First Nations experience in the criminal justice system. There is a wealth of ideas, proposals, talented people, unique institutions and committed communities which are joining together to give new meaning and definition to the concept of justice as healing. I have no doubt that the changes which are possible in the months and years ahead will be of national significance and in this respect initiatives in Saskatchewan will provide leadership. What is required at this stage, in my view, is some clarity and consensus on the agenda for reform and the critical path for change.**

This Commission holds guarded optimism about the future, but emphasizes that now is a critical time. The Commission believes that courage and leadership from Canada, Saskatchewan, and First Nations and Metis governments must be demonstrated. The Commission understands justice must be transformed to incorporate First Nations and Metis culture, traditions and beliefs. This means all people of Saskatchewan must be prepared to fundamentally shift their emphasis, their allocation of resources, their way of thinking about justice institutions and return justice to communities.