Aboriginal Justice in Saskatchewan

2002-2021: The Benefits of Change

A Report Presented to
The Commission on First Nations
and Métis Peoples and Justice Reform

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Finally and importantly, we are grateful to the Commission members for their confidence and support—and for giving us the opportunity to pursue a vision of justice reform based on a careful evaluation of the available evidence, of projections over the next twenty years, and of the costs and benefits of inaction and of intervention. If we cannot pretend to do anything like justice to the extensive literature, accumulated data, and diversity of experience in the justice system, we have attempted to tell a story that may make some reforms possible. The overarching aim throughout has been to contribute to an ongoing process of better serving justice in general and First Nations and Metis peoples in particular, and to support the Commission vision to bring about "*Meyo Wahkotowin*—One Community—working together to create a healthy, just, prosperous and safe Saskatchewan."

EXECUTIVE SUMMARY

Convened in November 2001 to address systemic and other discriminatory practices that impact First Nations and Metis peoples' experience in the criminal justice system, the Commission on First Nations and Métis Peoples and Justice Reform is mandated to identify efficient and effective means of improving the administration of justice; better reflecting the cultures, values, and strengths of Aboriginal communities; and promoting co-operation across communities and disciplines for a healthy, safe Saskatchewan. This report provides statistical and other information on the benefits of change and the cost of doing nothing in relation to crime, victimization, First Nations and Metis peoples and the justice system—information on which the Commission may base its own recommendations for reforming the justice system.

Our report shows, in tables, figures, and narrative form, that Aboriginal participation in the Saskatchewan justice system is growing, that it is becoming more costly, and that the costs will increase substantially if nothing is done—and, very importantly, that all members of the Saskatchewan community can benefit from changes to the justice system. In particular, the report documents costs of fulfilling provincial responsibilities for the administration of justice under section 92 of the *Constitution Act, 1982*: policing, courts, prosecutions, legal aid, corrections, youth justice, victim services, and alternative measures (with projections from best to worst case scenarios and with clear distinctions along gender, age, abilities, and other lines, where possible).

Instead of focussing only on problems (and their solutions), the report highlights opportunities for positive outcomes benefiting all and helping to realize the Commission vision of "*Meyo Wahkotowin*—One Community—working together to create a healthy, just, prosperous and safe Saskatchewan." It not only elaborates the costs of doing nothing under status quo conditions, but also considers the costs and benefits associated with proactive and preventative measures, investments in collective, community solutions and alternative measures that go beyond the adversarial and punitive: the value of education, community capacity-building, or programs for youth and inmates, for instance, and their implications for larger policy decisions. That is, initiatives within the status quo situation that are already directed at change are taken into account—initiatives like the four strategic approaches of Saskatchewan Justice and Saskatchewan Corrections and Public Safety: building community ownership and capacity; developing partnerships; adapting the criminal justice system to recognize and respect values of Aboriginal peoples and meet needs for safety and security; and improving service effectiveness to all stakeholders.

The report also addresses some persistent barriers to change:

- in the ways justice has been conceived.
- in the law's role in racialization and racism.

- in the persistence of myths and stereotypes inside and outside the justice system.

- in the construction and perpetuation of the "Aboriginal problem."

- in over-investments in a thriving justice industry.

- in under-investments in strengthening communities.

- in the ways research has been conducted, conveyed, and interpreted.

In particular, the report addresses an over-reliance on professional expertise and so-called hard data or quantitative measures that leave qualitative measures off the map (or relegate them to secondary status), and with profound consequences for the perceptions and decision-making of the general public and policy makers. And belief that the "hard" data describe reality in neutral terms obscures how the data actively produce the very "problems" they claim exist "out there" in the real world—much as the notion of terra nullius justified "the discovery" of North America and the dispossession of its peoples. Demographic representation, for instance, remains constrained by dominant forms of data collection, including what is and is not collected, but also by the colonial categories and simplifications of complex identities (collapsed into the crude calculus of Aboriginal/non-Aboriginal, for instance). And when financial accounting measures dominate, a range of benefits (less tangible but no less real in people's lives) fail to register in the benefit-cost calculus. To counter these dominant reporting trends, the report considers multiple categories of identity wherever possible (ethnicity, age, gender, abilities, education, etc.) and qualitative as well as quantitative measures, stories as much as statistics, to assess cost-benefits.

The report draws heavily on existing research on crime, victimization, First Nations and Metis peoples and the justice system, though it cannot presume to anything like comprehensiveness. Instead, the report builds on what we already know from the Canadian record and what we can learn from experience in the United States in order to uncover effective, efficient, and financially responsible means of addressing systemic discriminatory practices and other barriers to the fair and equitable administration of justice. So as not to repeat errors of the past, the report identifies lessons learned from the U.S. "war on crime" impacting disproportionately on youth and African Americans and producing financial crises for legislatures and crippling consequences for the socio-economic life of communities, cities, and states. We can learn too from current U.S. justice reinvestment.

In addition to building on academic publications and a number of important reports and commissions from the 1960s, the report benefits greatly from statistics produced and published by these authoritative sources:

- Canadian Centre for Justice Statistics (CCJS) at Statistics Canada

- Canadian Institute for the Administration of Justice

- Canadian Criminal Justice Association (CCJA)
- Correctional Service of Canada (CSC)
- Corrections and Public Safety (SK)
- Department of Social Services, Government of Saskatchewan
- National Crime Prevention Council
- Research Branch (Ottawa), Solicitor General of Canada
- Saskatchewan Department of Justice
- Statistics Canada
- Strategic Research and Analysis Directorate, Treaties, Research, International & Gender Equality, Indian and Northern Affairs Canada

After introducing the background to and purpose of the report, its scope, organization, and methodology, the report covers the following topics before presenting its conclusions:

- Popular myths and powerful realities.
- Demographic profiles (and projections) of North American Indian (First Nation) and Metis people living in Saskatchewan from 2001 (real) and 2002 to 2021 (projected).
- Breakdown of the number of North American Indian (First Nation) and Metis people involved in the justice system in Saskatchewan in 2001 (also by Aboriginal group, across age, gender, abilities, and type of justice system involvement where available) across the areas of policing, the courts, legal aid, criminal prosecutions, and adult and youth corrections.
- Valuation, in financial terms, of the cost of that involvement (also by Aboriginal group, across age, gender, abilities, and type of justice system involvement where available).
- Forecast of the number of Aboriginal people involved in the justice system from 2002 to 2021.
- Forecast of the likely type of justice system involvement by Aboriginal peoples from 2002 to 2021.
- Breakdown of the costs of that involvement, and what that involvement will amount to, in financial and other terms, over the 20-year period (2002-2021) if nothing is done.

- Estimates and projections (where available) of the costs and benefits of education levels, labour-force participation, education and mentoring programs, addictions counseling and employment skills training, alternative measures and initiatives that are beginning to effect change (for example, community and emotional needs programming, cultural and spiritual practices, educational and employment initiatives, alternative dispute resolution, community development, and Cree Court Party), on Aboriginal participation rates in the justice system (policing, the courts, legal aid, criminal prosecutions, and adult and youth corrections).

Drawing on a broad range of resources, the report not only presents, wherever possible, a financially-based case for change, but also provides analysis of qualitative measures of the cost and benefits of the status quo and of alternative measures. At all times mindful of the special fiduciary relationship with Aboriginal peoples requiring the federal government to act in their best interests and the constitutional recognition and affirmation of Aboriginal and Treaty rights elaborated in Section 35(1) and Section 25 of the *Constitution Act, 1982,* this report is concerned to represent the findings so as to help enlighten the general public and decision-makers.

Recognizing Aboriginal and treaty rights is not a privilege but a constitutional fact to be defended by all Canadians because all our freedoms and privileges depend on such recognition. The general population of Saskatchewan as much as Aboriginal peoples remain beneficiaries of the treaties by which our relations and realities are defined. With these historical and constitutional facts as well as the costs and benefits of social cohesion in mind, the report is designed to galvanize action by making vivid the mutual benefits of change and the costs of doing nothing and wasting opportunities, the costs of adding the investment in the Commission to the already substantial costs of failing to act and maintaining the status quo. In other words, we address widespread myths and fears about Aboriginal participation in the justice system, distinguish public perception and facts, and thereby aim to enrich public debate, facilitate decision-making, and motivate meaningful change.

1.0 Introduction

1.1 Background

> **The statistics leave no doubts as to the very sad state of aboriginal economic and social development today. If one is not moved by these statistics, one might instead be moved by the high and rising cost of the status quo. Failure to improve the situation will extract a large and rising charge on the public purse.** (McCallum, 1997)

The Report Industry from 1960s

A well-documented history of over-representation of Aboriginal peoples in the criminal justice system, high levels of violence and victimization, together with the tragic deaths of two Aboriginal men in January 2000 and the experience of abuse by police officers of a third man prompted the formation of the Commission on First Nations and Métis Peoples and Justice Reform in November 2001 with a mission to consult, build relationships and respect, recognize successes, and make recommendations for justice reform.

As long ago as 1964, a Projects Committee of the Canadian Corrections Association began addressing the special legal problems of Aboriginal people in Canada. Among the extensive list in the association report (1967), many of the following recommendations resonate still:

- end non-academic uses of residential schools.
- clarify treaty rights and jurisdictional responsibilities.
- delete Indian Act provisions on liquor control.
- expand the Indian constable system.
- provide legal aid and counsel to clarify pleas, processes, and provisions.
- expand probation and parole services.
- improve correctional services to Metis people.
- increase support for private after-care agencies and Friendship Centres.
- increase education on criminal law.
- hire Aboriginal personnel in justice services.

Arguing that only "joint and sincere action" would change the status quo—what the Union of Ontario Indians called the "unimaginable deterioration in the life"

of a "once proud and industrious people"—the report also recommended increased expenditures on housing, education, health, employment counselling and placement, and recreation "to meet the massive backlog of social and economic problems which contribute to the difficulty with the law experienced by [Aboriginal] people."

Ten years later a study of Saskatchewan's correctional system revealed the then shocking record: treaty males were 25 times more likely to enter corrections, those over 15 years of age 37 more likely, and treaty women 131 times more likely than the non-Aboriginal population (Hylton, 1983). And the 1977 McGuigan Parliamentary Subcommittee *Report to Parliament on the Penitentiary System in Canada* offered this crushing indictment of the prison system as the epitome of injustice and a "university" where "cruel lockups, isolation, the injustices of harassment" make "non-violent inmates violent, and those already dangerous more dangerous." In short, the report distinguished the rhetoric of justice and the realities of injustice concluding, "Society has spent millions of dollars over the years to create and maintain the proven failure of prisons," its comprehensive failure to correct the offender and to protect society clear in recidivism rates as high as eighty per cent (qtd. in Jackson, 1988a).

In 1988, on behalf of the Canadian Bar Association, Professor Michael Jackson (1988b) argued that such statistics "are so stark and appalling that the magnitude of the problem can be neither misunderstood nor interpreted away." And his report cautioned that the disproportionate representation of Aboriginal peoples in the prison population was growing and would continue to grow at a disturbing rate without radical change. Yet investment in the justice industry has continued to grow with insufficient regard to the costs and benefits of that industry—or to who bear the costs and who reap the benefits.

From Blaming the Victim to Examining Structures of Inequality

In spite of dire warnings and clear directions in decades of reports, inquiries, studies, and educational initiatives, the experience of First Nations and Metis peoples at the hands of the justice system remains an urgent concern. That experience, "the product of historical processes of dispossession and cultural oppression," according to the Royal Commission on Aboriginal Peoples (RCAP, 1996a), "casts a long shadow over Canada's claim to be a just society." If there have been significant changes in emphasis over the years, moving discussion away from blaming the victim or inventing criminal pathologies of Aboriginal individuals or communities to a concern with the structures of social inequality embedded over the decades in the legal system, the result has not always been as devastatingly explicit as a report for the Australian Human Rights and Equal Opportunity Commission on "the use of violence against Aboriginal youth as part of an institutionalised form of racial violence" and "part of the routine practices of policing" (qtd. in McNamara, 1992).

Though the 1967 Canadian Corrections Association Report called for "a massive educational campaign" to break up a vicious cycle of myth-making perpetuating stereotypes, concern with social indicators (poverty levels, employment and education, family breakdown, substance abuse, housing, mental and physical

health, suicide rates) has often become only a subtler form of the traditional colonial practice of pathologizing individuals and communities. And the problem is aggravated by the tendency among the marginalized and oppressed to internalize and enact dominant myths and stereotypes in a "self-validating" circular process that confirms the bias of mainstream perceptions.

If stereotypical views of Aboriginal peoples are disappearing from official government policy, they remain powerful "in the popular imagination" and influential "in shaping decisions of the police, prosecutors, judges and prison officials" (Jackson, 1988b). And the media have often been guilty of over-representing Aboriginal perpetrators of crime while under-representing them as victims, or otherwise misrepresenting and reducing Aboriginal peoples to caricature or stick figures (Lawrence, 2002) severed from their histories and from meaningful futures.

In 2001, for instance, John Stackhouse's fourteen-part series of **investigative** reports on "Canada's Apartheid" (published in *Globe and Mail* between 3 November and 15 December 2001) aimed to illuminate the social realities of so-called Aboriginal and non-Aboriginal relations. Stackhouse began in Saskatoon, welcoming readers to "Harlem on the Prairies." His piece has much to tell us about the state of the nation, how Canada understands its divisions and diversities, where responsibilities lie, the potential for mutual or collective understanding, and the material consequences of disciplines of knowledge, discursive practices, and identity categories for producing, policing, or dismantling and superceding boundaries that control access to social, cultural, legal, and economic spaces.

Readers might reasonably have expected that Stackhouse would enlighten them on the historical and legal facts of treaty federalism (Henderson, 1994a; 2003) the history of colonization, the racial and spatial logic of the Indian Act (Razack, 2002), the jurisdictional complexities that leave off-reserve and Metis peoples unprotected by the fiduciary relationship with Aboriginal peoples, and the particular struggles of "othered" groups (that is, those represented as different, as "they" and therefore excluded from the "we" of the dominant culture). Instead, Stackhouse perpetuates stereotypes of a "poor and polarized" province. Casting himself as an intrepid traveller in Canada's internal *terra incognita*—"a square mile of reckless inebriation"—he takes readers to a strange and dangerous place of the barely or unbearably human (Aboriginal) "other."

In place of historical analysis of the legal production of disadvantage and criminality, Stackhouse recirculates views that current realities are attributable to Aboriginal people themselves because they "can't cope with the transition from isolated reserves to a multicultural city." Stackhouse accepts at face value the evidence of his informants without attending to the history of relations of domination that have helped shape identities and geographic (and other) isolation and pathologies of disadvantage, while failing to see the evidence before his eyes of powerful models of achievement, of the invaluable difference of the Aboriginal community, enriching what we do here in Indian country. Nor does Stackhouse acknowledge his responsibility for producing the "realities" he describes in his highly selective mapping—or for doing so much damage to relations among peoples.

Had he cared to look, he might have seen, for instance, the appointment of Judge Mary Ellen Turpel-Lafond (and of Judge Gerry Morin), economic development initiatives, a flourishing urban reserve (established in 1988) increasing employment and reducing poverty, Aboriginal partnership agreements, a talented and distinguished Aboriginal cultural community, enhanced education levels and flourishing programs at the University of Regina and the Saskatchewan Indian Federated College (now the First Nations University of Canada). He might also have seen a 10 per cent Aboriginal student population at a University of Saskatchewan committed to *Renewing the Dream* by playing a lead role in Aboriginal education and scholarship, integrating Indigenous Knowledge, and partnering with Aboriginal communities. And the University of Saskatchewan is indeed home to many of the finest Aboriginal scholars and finest Aboriginal institutions, programs, or curricula in the country.

Instead, his "investigative" practice, in a series of skewed dispatches from the "front," ignores its own neo-colonial presumptions, priorities, and methods. It ignores what McIntyre (2000) calls "studied ignorance" and "privileged innocence" that uphold the status quo, assigning power, privilege, access to elite institutions, and hence the capacity to shape "realities" and "truths." Such privilege allows its holders not to know or think about systemic inequality or their own role in sustaining inequality; they can then "dissociate themselves from, and presume themselves innocent of, the cumulative appropriations and dispossessions that define systemic relations of domination." It ignores the ways that Aboriginal peoples, as RCAP (1996a) puts it, have been "legally and politically surrounded in Canada—they are fenced in by governance they did not discuss, design or desire."

It is precisely the racialized urban space that Stackhouse naturalizes that makes the "Aboriginal problems" so visible and so readily documented. Though the "pain and ugliness over on the non-Aboriginal side of the road is less visible, less publicized, less a topic of scholarly debate and official scrutiny," it is, argues the chair, United Nations Working Group on Indigenous Populations, "nonetheless there, a mirror image of the spiritual erosion on Indian reserves" (Daes, 2000). But the problems on the mainstream side of the road slip imperceptibly under the radar screen of social scrutiny. Meantime, focussing only on the surface appearance of incomprehensible conditions, the repeated cycles of violence and victimization, abuse and self-abuse, in a "crime-ridden native community" is enough to make attending police feel "their blood boil." One former police officer spoke on condition of anonymity of a frustration so profound that "you could kill someone."

Not only are people pushed to dangerous levels of frustration by conditions they cannot comprehend, but they seem doomed to perpetuate or aggravate those conditions. Such surface concern with social indicators (as Stackhouse exemplifies) diverts attention from the ways that the justice system has itself been the source of domination and oppression. "There can be no full solution to the 'problems' of 'Indians,'" argues Monture-Angus (1999), "if the role that law has played in our oppression and colonization is immune from scrutiny and remedy." To ignore the role played by the law in establishing and enforcing definitions of

race as well as racial stereotypes and discrimination (Backhouse, 1999) is to defer indefinitely meaningful reform to the administration of justice and the realization of Aboriginal aspirations.

McNamara (1992), La Prairie (1990), and Brodeur, La Prairie, and McDonnell (1991) have likewise urged careful treatment of social indicators. In particular, they have argued that "over-representation" as a conceptual tool to address injustice over-generalizes, naturalizes, and simplifies "the problem." In other words, over-representation depends on representational presumptions that unfairly racialize–that is, categorize and generalize on the basis of a single feature that is presumed to be defining—Aboriginal people in a story that is bristling with statistics and appeals to objectivity. In this fashion domination legitimates itself, silencing and sequestering the dominated and re-writing them as bearers of deficiency and dysfunction. Thus, the tool of "over-representation" contributes in turn to broad characterizations of "cultural divides," to insufficient analysis of the meaning of these privileged justice indicators, to failures to hold the system to account—and to a diminished ability to intervene and change the way things are done.

In the meantime, the allocation of resources continues to support lucrative expertise to define and address problems and solutions **for** Aboriginal peoples who continue to be excluded in large measure from control of the process.

As Hylton (1994) has argued, "Despite its high costs, this 'doing for' approach has never worked very well. . . . In fact, this policy has failed, and it has failed miserably." By contrast, efforts at Aboriginal programming are proving successful and include a range of benefits (Aboriginal staffing, economic benefits to communities, greater client satisfaction, reduced need for intervention, and even cost savings)—and this despite problems with stable, long-term funding, sufficient infrastructure and resources, issues of access, and even a climate of mistrust. If the justice system resists change, it risks losing public confidence: "justice can be part of the problem or part of the solution" (Hylton, 1994).

Although studies of over-incarceration and systemic discrimination have been "done to death," as Barkwell (1991) has argued, "As long as the planners and policymakers of the justice system are allowed to rationalize its failures by pointing to, and blaming, large and vaguely-defined 'social problems,' and claim that these are factors beyond control, they will continue to sidestep questions of relevancy and will continue to feed the syndrome of blaming the victim." And there are dangers in isolating justice reform as the answer to the "problems" in Aboriginal communities, not least of which is that the "solutions then become aboriginal control over justice without a clear delineation of the problems this approach can address and those it cannot" (Brodeur, La Prairie, & McDonnell, 1991).

Poverty as Participation

> **Poverty and powerlessness have been the Canadian legacy to a people who once governed their own affairs in full self-sufficiency.** (Hamilton & Sinclair, 1991)

It has long been known that poverty is a major reason for Aboriginal participation in the justice system (Jackson, 1988b, for instance), though it has been less obvious that the law has itself supported the impoverishment of Aboriginal peoples by constraining their use of land, labour, and resources and *criminalizing* behaviours in attempts to "civilize" Aboriginal peoples. From the Royal Proclamation of 1763 through the Constitution [British North America] Act, 1867, Indian Acts and Indian Advancement Act, 1884, to the Constitution Act, 1982, the regimes of ownership, development, and regulation have cut far deeper than the plough blade specified in the treaties. Instead, federal policy has supported a concerted assault on a whole way of life so that the plight of Aboriginal peoples "is by far the most serious human rights problem in Canada"—one that "can only continue to tarnish Canada's reputation" if no solution is found (Canadian Human Rights Commission; qtd. in Gosse, 1994).

The law enforced policies and bureaucratic and other controls (with significant discretionary powers) on everything from residence and movement, from timing and mode of hunting to definitions of leadership and governance and provision of electoral instruments to specifying how and when leaders could be removed, imposing involuntary enfranchisement (at expense of status), proscribing religious ceremony and cultural activities, and imposing residential schools (Miller, 1994). Similar policy interventions sustain to this day something like legislated poverty in terms of the "moderate livelihood" allowed for the exercise of Aboriginal treaty rights (*R. v. Marshall* [1999]).

Such socio-economic inequities mean social exclusion, health deficits, increased risks, and reduced access to mainstream opportunities and institutions (Lynch, Kaplan, & Shama, 1997). And the situation is aggravated by jurisdictional disputes that leave gaps in services that further isolate and marginalize Aboriginal peoples, and especially the majority residing off-reserve and in urban settings who constitute "the poor man of the Canadian constitution" ill served by federal programming (Chalifoux & Johnson, 2003). Or those with disabilities who are given the "'ping pong' treatment, shuffled from one agency to another" (Durst and Bluechardt, 2004). All in all, the effect has been to undermine or erode social cohesion and transform independent nations into wards of the court incarcerated disproportionately in the provincial correctional system for "minor infractions" that "reflect social, rather than criminal, problems" (CCJA, 2000).

Correcting Deficits in Political Action and Public Understanding

> **One cannot erase the history of colonialism, but we must, as an imperative, undo it in a contemporary context.** (Turpel, 1994)

In these circumstances, deficits in political and other responses to report recommendations (and their implementation) have remained as striking as the deficits in public understanding. In particular, there remains a serious deficit in public knowledge about Aboriginal peoples, Aboriginal and treaty rights, colonial history, fiduciary responsibility to Aboriginal peoples, and constitutional protections afforded by section 35 of the *Constitution Act, 1982*. Without such understanding, as the Aboriginal Justice Inquiry of Manitoba (Hamilton & Sinclair, 1991) makes clear, there can be no shared commitment to justice. In its 1991 Report, the Law Reform Commission of Canada likewise defended its departure from the general principle that "criminal law and procedure should impose the same requirements on all members of society" not on political grounds but by virtue of "the distinct historical position of Aboriginal persons" that entails a "different constitutional status."

In this context there is a special obligation to be clear about the specificities of the problems (McNamara, 1992) for different Aboriginal groups and for differentially affected members of the groups (women, youth, people with disabilities, for instance). There is an obligation to identify and interrogate racialization (the process whereby peoples are constructed on the basis of a single "defining" feature as different and inferior and whereby they are encouraged or required to organize and assess their experience) and the racist and other forms of differential treatment across and within communities.

There is an obligation to expose such forms of oppression that have limited people's freedoms until "External oppression becomes self-oppression. The victim of oppression travels the road of life thinking at every crossroads 'Not that way,' until the result is immobility, inaction, and self-isolation." The effect of internalizing constant messages that they are "backward, ignorant, weak, insignificant" is that people can come to believe, ironically, that they are "very, very fortunate to have been colonized!" (Daes, 2000). And there is an obligation to pursue the right and just outcomes—and not to be overwhelmed by either the enormity or the urgency of the issues.

There is an obligation to probe the self-evidence of the "hard data" on crime rates, explain how criminality is construed, question the efficiencies (economic and other) of processing people in the justice system, and promote reforms that go beyond minor adjustments or accommodations within the justice system. Of course, the notion of reform itself necessarily entails "some degree of preservation of the subject matter of the reform exercise" (W. H. Hurlbert, 1986; qtd. in McNamara, 1992). Fundamental change requires more than adding on programmes like cultural sensitivity training or substituting Aboriginal for non-Aboriginal personnel. It requires respecting Aboriginal law and rethinking legal realities, relations, and rationalities (and the many irrational assumptions about variously constructed "others" on which they have been based)—their legacy and legitimacy inside and outside the justice system. Only then will legislatures and other constituencies be able to break fully with the presumptions and paternalisms of the past.

It is important to acknowledge too that demographic representation remains constrained by mainstream data collection practices, ensuring particular patterns of inclusion and exclusion, as much as by colonial categories and simplifications of complex identities (collapsed into oppositions between Aboriginal and non-Aboriginal, for instance). Recognition and jurisdiction of Metis peoples has been a long struggle in the face of the artificial boundaries of identity, though the Metis Act, 2002, importantly recognized the economic and cultural value of Metis contributions to the province of Saskatchewan and affirmed the province's commitment to working with Metis peoples on governance, land, and other issues. To counter dominant reporting trends, it is vital to address multiple categories of identity (age, gender, abilities, education, etc.), to attend to stories as well as statistics, and to consider why some crimes are reported and others not.

Instead of perpetuating myths that support fears, Monture-Angus (1995) argues, "People must stop fearing the possible creation of many Aboriginal criminal codes. What Aboriginal people seek is the acceptance that there can be more than one valid and legitimate way to address disputes and wrong-doings. . . . This idea of too many criminal codes is also a myth that is perpetuated by those who have been unable to understand that there are many paths to follow to arrive at a just society."

In that regard, it is important to recall the complex management of jurisdiction within the province of Saskatchewan as well as across federal, provincial, municipal, and First Nations jurisdictions. If the federal government enacts law under section 91 of the *Constitution Act, 1982*, and manages policing, corrections, and parole functions under the Solicitor General of Canada, while other justice functions (federal courts, appointment of federal judges and superior court judges in provinces, community justice and crime prevention programs) come under the Federal Minister of Justice, under section 92 of the *Constitution Act*, the province is responsible for the administration of justice in Saskatchewan to ensure "social stability, and by extension, contribute to a high quality of life for citizens." To achieve these goals, the justice system needs to be fair and relevant as well as "trusted and understood" (Saskatchewan Justice, 2002).

The provincial responsibility includes prosecution of *Criminal Code* and *Youth Criminal Justice Act* offences, administering the courts, legal aid, and provincial policing contracts with RCMP, appointing provincial court judges, administering adult custody sentences of less than two years, and all youth sentencing, as well as administering public prosecutions, community justice, alternative measures, supervision, victims services, policing and crime prevention programs. Under the *Indian Act*, First Nations governments may enact band bylaws to regulate the community and, with federal and provincial agreement, administer justice services, while municipal governments are mandated to provide policing in larger centres and administer traffic and municipal by-law courts. In supporting a healthy and safe community, even health and school boards as well as community organizations play a role in terms of addictions and mental health programming.

Further, there is an obligation to be clear not only about what the research and data allow us to claim but about what they *require* us to claim about the historical and legal facts of Aboriginal and treaty rights and about the treaties of which we

all—Aboriginal and so-called non-Aboriginal—remain beneficiaries and by which our relations are defined. Recognizing Aboriginal and treaty rights is not a privilege but a constitutional fact to be defended by all Canadians because all our freedoms and privileges depend on such recognition. There are no winners or losers in doing the right thing, only winners in sharing the power to redefine the administration of justice and dissipate the fears that have driven so much public debate and policy decision-making—fears, for instance, even among First Ministers "that their own limited sovereignty and jurisdiction would be jeopardized if the aboriginal right to self-government ever became entrenched as constitutional law" (Bear Robe, 1991).

And it is important to acknowledge and build on initiatives that are making a difference—initiatives like Saskatchewan's *Metis and Off-Reserve First Nations Strategy* and the four strategic approaches of Saskatchewan Justice and Saskatchewan Corrections and Public Safety (2003):

- building community ownership and capacity to address the factors associated with offending and victimization.
- developing partnerships.
- adapting the criminal justice system so that it recognizes and is respectful of the values of Aboriginal peoples and meets needs for safety and security.
- improving the effectiveness of services to victims, offenders and communities.

Imposing/Interpreting Criminal Codes

They say that
The wheels of "Justice",
They grind slowly
Yes we know.
But they grind
And they grind
And they grind
And they grind.
It seems like they grind
Forever. ..

(Anishnabe Elder, Art Solomon; qtd. in RCAP [1996a])

Crowe (1994) spoke for many when he expressed frustration about a system many feel was "wrongly forced" on peoples who "welcomed European settlement" and made no attempt to force their own system of law and justice on them. Yet that Aboriginal system was so much more cost-effective. It asked that "offenders repay the community rather than their wrongs ending up a financial burden to the community. And when I say a financial burden, I mean a financial cost in every one of your pockets." Even worse, "We seem to find ways to run up our

social costs, but we never find resources to correct the problem." What Crowe (1994) demanded was "an investment in the future and a way to lower some of the continuing costs for everyday law enforcement and for correctional centres. In Indian country we don't want handouts. We don't want welfare. We want economic opportunities."

The problem, argues Henderson (1994b) is that interpretation of the national Criminal Code enacted in 1892 ignored a treaty order that made no delegation to federal authority. Rather federal authority itself derived from the prerogative treaties. Invested in the notion of "impersonal and neutral laws," the Criminal Code nevertheless represented "the cultural interests of the British immigrants and rejected the treaty order." Empowering Indian agents to act as Justices of the Peace under section 107 of the Indian Act empowered them "to more effectively implement the purposes of the legislation and the policies of the Indian Affairs Branch of the Government of Canada" (Morse, 1982; qtd. in McNamara, 1992).

Confronting an Alien Order

> **In order for a society to accept a justice system as part of its life and its community, it must see the system and experience it as being a positive influence working for that society. Aboriginal people do not.** (Hamilton & Sinclair, 1991)

Despite such concerns voiced over the decades, the justice system remains today as alien to many Aboriginal peoples as it did in 1885 when chief Poundmaker pronounced the law "a hard queer thing," adding, "I do not understand it." And that alienation from mainstream law continues to be viewed by the mainstream as primitive obtuseness or even inherent criminality. According to Hamilton and Sinclair for the Aboriginal Justice Inquiry of Manitoba (1991), justice for Aboriginal people is not a matter of enforcement and punishment but a matter of restoring "the peace and equilibrium within the community" as well as reconciling "the accused with his or her own conscience and with the individual or family who has been wronged." From their point of view, "the essential problem is that the Canadian system of justice is an imposed and foreign system. In order for a society to accept a justice system as part of its life and its community, it must see the system and experience it as being a positive influence working for that society. Aboriginal people do not." Especially damning was the conclusion that the justice system sanctioned oppression that produced the "current state of social and economic distress" that is the cause of further discrimination in the justice system. This, they add, "is no less racial discrimination; it is merely 'laundered' racial discrimination."

On the evidence of chief Allan Ross of Norway House, the face of "lady justice" presented to Aboriginal people is much less benign than that experienced by other citizens and residents of Canada:

> **Anyone in the justice system knows that lady justice is not blind in the case of Aboriginal people. She has one eye**

> **open. She has one eye open for us and dispenses justice unevenly and often very harshly. Her garment is rent. She does not give us equality. She gives us subjection. She makes us second class citizens in our own land.** (Hamilton & Sinclair, 1991)

As one speaker addressing the Commission on First Nations and Métis Justice Reform in La Loche put it, "When I talk about justice, it has to be looked at with respect to not just lawbreaking. The concept of justice in Dene means a way of life, it means responsibility, it means child rearing. . . . There is no word for justice in Dene." For one Elder the justice system has "no heart" for healing and "brings pain for First Nations people," while jails are "anti-spiritual centres for the teaching of disrespect and breaking up families." And for another Elder, jails simply repeat the abuse of the residential schools (Commission [2003c]).

From the perspective of the Canadian Criminal Justice Association (2003), the evidence is overwhelming on Aboriginal people's overrepresentation in the justice system and their persistent alienation from a foreign and inaccessible system marked by "overt and systemic racism." The costs, "in both human and fiscal terms," prove to be "not only exhorbitant, but also spiralling."

Distinguishing Fact and Fiction

> **That two-thirds of the people living off the avails of [treaties] wish they had never been struck is an indictment of Saskatchewan's education system and its political leadership.** (Treaty, 2003)

If 76 per cent of Americans admit to fearing violence (Adams, 2003) and typically list crime high on their list of concerns (Greenwood, Model, Rydell, & Chiesa, 1998) despite declining crime rates (Belden Russonello & Stewart, 2001), the result of such perceptions has been predictably divisive and simplified calls for legislatures and judiciaries to be "tough on crime," show "zero tolerance," incarcerate, and fill boot camps. Fear is indeed a powerful indicator of punitiveness and "high levels of fear" correlate with "*negative* views of the police and the courts" (Roberts, 2001). Although recent studies show Canadian values diverging from American values (Adams, 2003) and fewer Canadians report fear of crime (27 per cent) than the 29 per cent in 1970 (Roberts, 2001), Canadians—and their media—have not entirely avoided similarly fearful claims about escalating crime and simplified discourses drawing clear boundaries between law-abiding and criminal classes, good guys and bad guys, "us" and "them." And such thinking was evident in 2003 public debate around the municipal and provincial elections in Saskatchewan with opinion polarized between competing conceptions of crime and criminality—who are criminals, why they resort to crime, and who are the "real victims"—and different understandings of appropriate remedies.

If people could not agree on the problems—the sources, nature, or extent of crime or the relation between crime and corrections—they were no closer to consensus on the solutions. In the case of First Nations and Metis participation in the justice system, opinion divided between those who appealed to the sacred promises of treaty and "the honour of the Crown," arguing that we cannot understand such participation separate from a colonial history of inequity and a current reality of systemic discrimination, and those who prefer to forget the past, subscribe to a myth of meritocracy, overlook their own privileges, and dismiss what they call "race-based" equality; between those who demanded increased punishment and policing, incarceration, and boot camps and those who called for alternative measures and new forms of policing, including community policing, new ways of doing justice to prevent behaviours, divert people from the justice system, and address the root causes of crime.

The prominence of crime in media coverage of the elections is perplexing when crime has never figured as an important social issue for Canadians: since the late 1980s, the percentage of the public reporting crime as the most important problem has ranged between 2 and 5 per cent compared with 58 per cent focused on child poverty and 69 per cent on health. And Canadians are increasingly sympathetic to alternative rather than punitive measures: a 2000 study of parole, for instance, showed 85 per cent support (Roberts, 2001). But myths also drive public debate and fears erode public confidence in the administration of justice. A 1994 study, for instance, showed that 68 per cent of Canadians believed that crime had increased in the previous five years, when statistics recorded a 5 per cent decrease in 1994, the third such decrease in a row (Roberts, 2001). Though property crimes represent 44 per cent, offences such as mischief, disturbing the peace, and failure to appear in court represent 43 per cent, and violent crime only 13 per cent of crime in Saskatchewan, it is important to concede that violent crime rose 8 per cent in 2001 and is 300 per cent higher than in 1981 (Saskatchewan Justice and Corrections, 2001).

But we can learn from the United States experience of negotiating competing views and visions of crime and justice. In particular, we can learn from hard lessons learned about the excessive costs without related benefits of the "war on crime" that has disproportionately impacted on youth and African Americans. That policy has also produced crippling financial burdens for communities and state legislatures as well as dysfunctional communities. The effect is that the concerted "war on crime" has been reconstituted as a determination to be "smart on crime" and reinvest in justice (Butterworth, 2003).

And from Aboriginal perspectives, the debate about law and order in Canada has been especially paradoxical in light of mainstream inclinations to disregard or disdain such legal documents as the Treaties, their failure to live up to the promise, spirit and intent of legal decisions, and their ignorance of the substantial benefits accruing to all signatories. As a Saskatoon *Star-Phoenix* editorial pronounced, "That two-thirds of the people living off the avails of those agreements wish they had never been struck is an indictment of Saskatchewan's education system and its political leadership" (Treaty, 2003).

In order to respond to public backlash against Aboriginal rights, the Commission is challenged to address stereotypes, myths, and fears that in the face of overwhelming statistical and other information persist in structuring social relations between and among communities. As recently as November 2003, such backlash was vividly registered in a Centre for Research and Information on Canada finding that 49 per cent of Canadians think "few or none" of Aboriginal land claims have merit and 62 per cent of Saskatchewan people polled believe that it would be better to do away with treaty rights and treat Aboriginal peoples "the same" as other Canadians.

1.2 Purpose

Galvanizing Change/ Defining Mutual Benefits

> **Canada is a world leader in many fields, particularly in the areas of progressive social policy and human rights. Unfortunately, our country is also distinguished as being a world leader in putting people in prison.** (R. v. Gladue [1999] 2 CNLR at para. 52)

In this context this report is designed to support the mandate of the Commission on First Nations and Métis Peoples and Justice Reform (and all those who contributed to consultations and roundtables) by presenting the evidence to negotiate competing versions of and visions for the criminal justice system, competing versions of the nature of the problem and its solution, and redefine justice for all.

This report records what we already know, the massive evidence of studies, reports, and commissions, **and** how readily people forget or fail to act. It recalls an enormous capacity to act in defiance of knowledge—and to rationalize that capacity by finding the evidence incomplete, overwhelming, or otherwise insufficient to merit immediate action. This capacity is aggravated by what has been called the new racism or democratic racism, an insidious form that remains invisible to those in the dominant culture. Democratic racism, according to Henry and Tator (2002), "arises when racist beliefs and behaviours remain deeply embedded in 'democratic' societies. Obfuscations and justifications are deployed to demonstrate continuing faith in egalitarian ideals, even while many individuals, groups, and institutions continue to engage in systemic racist practices that serve to undermine those ideals." Hence, investments in equality and justice "*conflict* with but also *coexist* with negative feelings about minority groups and discrimination against them." Further study becomes an easier option than policy and other change, while appeals to the (mainstream) bottom line, to fiscal fairness and responsibility, dignify ignorance and exasperation.

With humanizing examples and contexts for its figures, the report aims to help address and even displace some dominant myths and current public backlash against "race-based" justice and "special rights" in favour of simplifications about equality before the law that studiously ignore an ongoing history of inequality experienced by First Nations and Metis peoples. Dominant Canadian

myths of a welcoming, tolerant, and open multicultural society celebrating diversity have played their part in producing, permitting, and promoting such ignorance of the harsh realities of racialization and the disadvantage it rationalizes.

Similarly, the report addresses concerns that we cannot afford change. Instead, the report documents the enormous financial burden of the administration of justice and the benefits to all of change. Hnatiuk (1994) likewise probed debts and deficits, looking into a very expensive "mirror with many cracks" and detailing "the costs resulting from the lack of a just social system"—costs that "no words, statistics, graphs, trend lines or numbers could adequately capture." Instead of commissioning yet more studies, reviews, and inquiries, the Department of Social Services has been working for change together with First Nations representatives, tribal councils, bands, and chiefs, breaking barriers and redefining boundaries.

By including gender, age, and abilities in the statistical and narrative representation, the report aims to make visible the effects of systems of domination (in addition to race and racism) impacting on individuals in the justice system. Only then can people help make sense of the figures and understand how/why they might be changed. People might find reason to change the way things are if they understood the role of poverty—the growing disparity in social health indicators between Aboriginal peoples and the rest of Canada. While Canada's ranking in the United Nations Human Development Index (available on the UN web site) is an enviable one, the Strategic Research and Analysis and the Social Cohesion Network (2001) points out that the Aboriginal population would rank 48th in the world behind Panama. And this ranking despite increased levels of mainstream educational attainment (in addition to traditional knowledge) among Aboriginal people revealed in the Census Canada 2001 education statistics (Statistics Canada, 2003d).

That is, the report is designed to give a human face to statistics and to probe the justice system participation rates it documents so that the public and decision-makers can better understand their significance and intervene more effectively. People might demand change if they recognized that an estimated 75 per cent of children in custody have some disability (Green & Healy, 2003). Or if they knew that 90 per cent of Aboriginal women in federal prisons report a history of physical abuse and 61 per cent a history of sexual abuse (Elizabeth Fry, 1993). Or if they knew that participation in cultural and spiritual practices, Aboriginal employment and education programs, or community and emotional needs programming reduced recidivism (Sioui & Thibault, 2002). Or if they understood the damage and dysfunction caused by child welfare, foster care, forced adoptions, and residential schools to families, to people's addictions, and their capacities for intimacy and relationship-building, they might demand change now. Then we might all understand the Australian Aboriginal country and western song cited by S. Muecke in *Textual Spaces: Aboriginality and Cultural Studies* (1992):

But prison's nothing special
For any Nunga I know,
Cos the white man makes his prisons
Most everywhere we go.

To open minds and enrich debate, statistics are framed by some plain speaking from the Supreme Court of Canada and the authorities it cites in, for example, *R*. v. *Van der Peet* [1996] on the damage done to Aboriginal rights by "liberal enlightenment" thinking on which Canadian courts continue to rely (at paras. 18 and 19). Or in *R v. Gladue* [1999], where the Court is clear that, though Canada is "a world leader in many fields, particularly in the areas of progressive social policy and human rights," it is also "distinguished as being a world leader in putting people in prison," incarcerating 130 per 100,000, while the United States leads with the highest rates in the world at 600 per 100,000 (at para. 52). To redress the growing disproportion of Aboriginal people in corrections and systemic discrimination in the criminal justice system, the Supreme Court is clear that treating Aboriginal offenders fairly means "taking into account their difference" (*R v. Gladue* at para. 87).

With these instructions in mind, this report is designed to galvanize action by making vivid the mutual benefits of working together for change and the costs of doing nothing and wasting opportunities, the costs of adding the investment in the Commission to the already substantial costs of failing to act, of maintaining the status quo—and a **costly injustice system**. That system is costly not least in terms of the average annual cost of incarcerating inmates federally—in 2000-2001, $66,381 for each man and $110,473 for each woman—and for parole supervision $16,800 per offender (CSC, 2001).

The report also takes aim at the myth of the intractability of the "Aboriginal problem"—an intractability constructed and maintained by those with the power and the means but with insufficient will to change the way things are. As Elder Art Solomon told the Manitoba Justice Inquiry, "We have become the victims of a very vicious system which intends to keep itself going, but as long as I live I will speak against that obscenity" (Hamilton and Sinclair, 1991). In light of such concerns about interests in maintaining the justice industry by warehousing the product rather than eradicating the root problems, the report speaks to widespread misconceptions, myths, and fears about Aboriginal participation in the justice system, elaborates the history of such participation, and distinguishes public perceptions and documented facts in order to enrich public debate, facilitate informed decision-making, and motivate meaningful change.

1.3 Scope

This report provides statistical and other information on benefits of change and the cost of doing nothing in relation to crime, victimization, First Nations and Metis peoples and the justice system—information on which the Commission may base its own recommendations for reforming the justice system. The report shows, in tables, figures, and narrative form, the ways in which these costs are

rising within the justice system in the province: costs of policing, courts, prosecutions, legal aid, alternative measures, corrections, youth justice, and victim services (with projections from best to worst case scenarios and with distinctions along gender, age, abilities, and other lines where possible).

Instead of focussing only on problems (and their solutions), the report highlights success stories and opportunities for positive outcomes benefiting all. It not only elaborates the costs of doing nothing under status quo conditions, but also considers **how** the costs and benefits associated with proactive alternative measures may be calculated: the value of education, community capacity-building, or programs for youth and inmates, for instance, and their implications for larger policy decisions. That is, initiatives within the status quo situation that are already directed at change are taken into account.

For demographic comparisons and cost projections, this report relies on Statistics and Census Canada definition of Aboriginal identity, supplemented, where appropriate, by information on the Registered Indian population, as defined by the Department of Indian Affairs and Northern Development (DIAND). Specific reference is made to age cohorts, representing those individuals in the youth offender age group (12 to 17 years of age), and adult offender age group (18+). The demographic profiles are broken down further by gender. First Nations are also divided into on- and off-reserve cohorts.

The Aboriginal population participating in the Canadian justice system generally and the Saskatchewan justice system specifically is defined and profiled. This profile includes a breakdown by age and gender cohorts, as well as across federal, provincial, and municipal jurisdictions, where possible.

The costs associated with participation in the Saskatchewan justice system (federal, provincial, and municipal) is linked to the general Aboriginal population data, broken down by the relevant cohorts (age and gender). The predicted participation rates of Aboriginal peoples involved in the Saskatchewan justice system is forecast over 20 years (or one generation), from 2002 to 2021, based on 2001 Census data and other sources.

The costs associated with the projections are made in constant 2001 dollars, based on minimum (2 per cent), medium (3 per cent), and maximum (4 per cent) inflation rates (or discount rates). That is, we are not using nominal rates that do not account for inflation and presume that a dollar is worth the same in twenty years as it did in 2001. The costs are broken down by Aboriginal, age, and gender cohorts by justice system participation (federal, provincial, and municipal). Where appropriate, minimum (conservative), medium, and maximum forecasts are made to provide a range of possible cost-projection options.

The implications of Fetal Alcohol Spectrum Disorders (FASD) and abilities issues, and the benefits associated with interventions such as restorative justice, increased education, and labour force development are discussed and evaluated—to the extent possible given the incompleteness and inconsistency of statistics and questions, for instance, about the accuracy of data so dependent on

self-identification and on perceptions about what matters and what is valuable, or the lack of resources to test or treat disabilities, such as FASD.

The analysis concludes with a discussion of ways and means to facilitate effective cost-benefit analyses comparing alternative interventions and justice strategies **given** demographic and cost projections.

1.4 Organization

After elaborating the background to and purpose of this report, its scope and organization and before presenting conclusions, the report covers these topics in this order:

- Popular myths and powerful realities.
- Demographic profiles (and projections) of North American Indian (First Nation) and Metis people living in Saskatchewan from 2001 (real) and 2002 to 2021 (projected).
- Breakdown of the number of North American Indian (First Nation) and Metis people involved in the justice system in Saskatchewan in 2001 (also by Aboriginal group, across age, gender, abilities, and type of justice system involvement where available) across the areas of policing, the courts, legal aid, criminal prosecutions, and adult and youth corrections.
- Valuation, in financial terms, of the cost of that involvement (also by Aboriginal group, across age, gender, abilities, and type of justice system involvement where available).
- Forecast of the number of Aboriginal people involved in the justice system from 2002 to 2021.
- Forecast of the likely type of justice system involvement by Aboriginal peoples from 2002 to 2021.
- Breakdown of the costs of that involvement, and what that involvement will amount to, in financial and other terms, over the 20-year period (2002-2021) if nothing is done.
- Discussion on estimating and projecting the costs and benefits of education levels, labour-force participation, education and mentoring programs, addictions counseling and employment skills training, alternative measures and initiatives that are beginning to effect change (for example, community and emotional needs programming, cultural and spiritual practices, educational and employment initiatives, electronic monitoring, alternative dispute resolution, community development, and Cree Court Party), on Aboriginal participation rates in the justice system (policing, the courts, legal aid, criminal prosecutions, and adult and youth corrections).

2.0 Methodology

> **We live in an era when everything must be measured. . . . But those measures were too often body counts. . . . We have no equivalent measures of life's quality or metrics of the human spirit. It's as if we see ourselves and those in the rest of the world only through the prism of fear and greed.** (Adams, 2003)

In the context of a Commission on First Nations and Métis Peoples and Justice Reform whose mandate derived from "the deaths of two Aboriginal men in January of 2000 . . . and the abuse of a third man endured at the hands of Saskatoon police officers" (Commission, 2003), it is important to recall that Aboriginal people in Canada (and elsewhere) have long been subjected to "expert" scrutiny and to undue burdens of proof. If we are not to repeat the errors of the past and offer insufficiently considered "solutions," we need to be sensitive to the power of information, to Aboriginal people's experience of institutionalization and intervention by external agencies, and to their measurement according to alien and coercive standards of accountability, evidence, rationality, justice, and value.

While Smith (1999) has highlighted the links between "scientific research" and "the worst excesses of colonialism," Neu and Therrien (2003) have identified accounting as one of the soft technologies that manage Aboriginal peoples by translating policy into practice. From their perspective, accounting "is not a passive recording of numerical information but rather a dynamic force in controlling events—and therefore populations—from a distance" (29). And, in the context of youth gangs, the Federation of Saskatchewan Indian Nations (FSIN, 2003) is equally sensitive to the power of mediation and accounting measures in developing its own Alter-Natives to Non-Violence Initiative as a strategic response to practices enumerating "the problem" and thereby justifying self-fulfilling police surveillance and criminal justice "solutions."

In the light of this history, it is especially important to reflect critically on models of accounting to ensure that they do not themselves reproduce the inequalities and injustices they are designed to help address. If financial indicators and statistics are given undue weight and if there is insufficient monitoring of key terms and assumptions, the findings (and the reasoning on which they are based) can operate to limit understanding of the issues as well as the usefulness of the findings. Indeed they may reinscribe the very mainstream understandings of who and what matters that lie at the heart of the status quo—and justify its perpetuation by offering mainstream solutions to so-called Aboriginal problems without listening to and learning from First Nations and Metis perspectives. Sensitivity to accounting practices is vital at a time when legislatures continue to rely on the much valued "independence" and "objectivity" of experts in developing public policy, when traditional accounting is itself in crisis (after Enron, Andersen, WorldCom, etc.), and when Aboriginal peoples are almost literally "studied to death."

When dealing with statistics and dollar values, then, it is especially important to monitor their sources—whose voices, values, and visions are respected, what data is disputed or disputable—and to supplement and translate these values into terms meaningful to all stakeholders. It is equally important to recognize that the financial measure is but one—if the most readily quantified and reportable—measure. And, if it is not to underplay or obscure other factors, that monetary measure should be considered in relation to an assessment of non-monetary costs. Though they are less readily quantified, the broader costs—human, social, cultural, health, educational, environmental—of doing nothing need to be assessed:

- costs to individuals, families, communities.
- costs to the seventh generation.
- costs of missed opportunities and overlooked First Nations and Metis courage, capacities, and contributions.
- costs of "stolen lives," to paraphrase Yvonne Johnson, a Cree woman and great-great-granddaughter of Big Bear currently serving her sentence for first-degree murder (Wiebe & Johnson, 1998).

The data is therefore placed in relation to the overwhelming evidence of the failures and biases of the justice system in a whole series of reports, justice inquiries, and royal commissions from the 1960s to the 1990s, from Canadian Corrections Association, *Indians and the Law* (1967) to *Locking Up Indians in Saskatchewan* (1976-77) to the *Report of the Aboriginal Justice Inquiry of Manitoba* (1991) to the Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide* (1996a). As Matthew Coon Come, former Grand chief of the Assembly of First Nations, has argued of the Report of the Royal Commission of Aboriginal Peoples (RCAP), "Its findings have never been discredited. Never impeached. Never refuted." Like many other such reports, it has nevertheless been largely "buried and ignored."

With these caveats in mind, our report explodes myths about a justice system "soft" on Aboriginal offenders. In fact, Aboriginal participation in the Saskatchewan justice system is growing, it is becoming more costly, and the costs will increase substantially if nothing is done. The report shows, in tables, figures, and narrative form, the ways in which these costs are rising within the justice system in the province. The report includes costs of policing, courts, prosecutions, legal aid, alternative measures, corrections, youth justice, and victim services (with projections from best to worst case scenarios and with distinctions along ethnicity, gender, age, and, where possible, abilities, and other lines). We not only elaborate the costs of doing nothing, but also consider the costs and benefits associated with the value of education, community capacity-building, or programs for inmates, for instance, and their implications for larger policy decisions. That is, we take into account initiatives within the status quo situation that are already directed at change.

In addition to drawing on important reports and commissions from the 1960s on, the report benefits greatly from statistics produced and published by the following authoritative sources:

- Canadian Centre for Justice Statistics (CCJS) at Statistics Canada
- Canadian Institute for the Administration of Justice
- Canadian Criminal Justice Association (CCJA)
- Correctional Service of Canada (CSC)
- Corrections and Public Safety (SK)
- Department of Social Services, Government of Saskatchewan
- National Crime Prevention Council
- Research Branch (Ottawa), Solicitor General of Canada
- Saskatchewan Department of Justice
- Statistics Canada
- Strategic Research and Analysis Directorate, Treaties, Research, International & Gender Equality, Indian and Northern Affairs Canada

In this way, the report not only presents a financial case for change, but also provides analysis of qualitative measures of the cost and benefits of the status quo. At all times, the report is concerned to represent the findings so as to help enlighten the general public and decision-makers. In other words, we address widespread myths and fears about Aboriginal participation in the justice system, distinguish public perception and facts, enrich public debate, facilitate decision-making, and motivate meaningful change.

To these ends, the report, where appropriate, discusses comparative data on non-Aboriginal participation in Saskatchewan as well as on trends and issues in other jurisdictions. The information is profiled and summarized in a number of strategically placed figures and tables. Building on the example of the 1996 *Saskatchewan and Aboriginal Peoples in the 21st* Century, the report presents important data and information related to demographic trends, health, employment, education, and income in ways that are accessible and clearly connected to the analysis. The following are the major emphases:

- Demographic profiles (and projections) of North American Indian (First Nation) and Metis people living in Saskatchewan from 2001 (real) and 2002 to 2021 (projected).

- Breakdown of the number of North American Indian (First Nation) and Metis people involved in the justice system in Saskatchewan in 2001 (also by Aboriginal group, across age, gender, abilities, and type of justice system involvement where available) across the areas of policing, the courts, legal aid, criminal prosecutions, and adult and youth corrections.

- Valuation, in financial terms, of the cost of that involvement (also by Aboriginal group, across age, gender, abilities, and type of justice system involvement where available).

- Forecast of the number of Aboriginal people involved in the justice system from 2002 to 2021.

- Forecast of the likely type of justice system involvement by Aboriginal peoples from 2002 to 2021.

- Breakdown of the costs of that involvement, and what that involvement will amount to, in financial and other terms, over the 20-year period (2002-2021) if nothing is done.

- Estimates and projections of the costs and benefits of education levels, labour-force participation, education and mentoring programs, addictions counseling and employment skills training, alternative measures and initiatives that are beginning to effect change (for example, community and emotional needs programming, cultural and spiritual practices, alternative dispute resolution, community development, and Cree Court Party), on Aboriginal participation rates in the justice system (policing, the courts, legal aid, criminal prosecutions, and adult and youth corrections).

2.1 Methodological Assumptions and Choices

Demographic determinations

In addition to the above methodological considerations in representing the data and analysis in our report, we have made other choices about authoritative sources of data, the best means to represent the data, and appropriate forecasting models based on statistical and other assumptions. For example, for the most part, we follow the Census Canada definition of "Aboriginal" (including North American Indian, Metis, Inuit, and where appropriate, "other" Aboriginal) in part because it is more inclusive in terms of its categorization of Indian people (those that identify, on or off-reserve, status or non-status). We did not choose to use the Department of Indian Affairs and Northern Development (DIAND) data focused exclusively on "Registered Indians" (although we refer to data on Registered Indians from time to time for comparative purposes). Further, the DIAND data is over-inflated because it includes Registered Indians associated with, for instance, a band (reserve) in Saskatchewan, but residing outside the

province. "Incomplete enumeration and undercoverage," according to Statistics Canada (2003a), "account for the most difference between the 2001 Census count of persons registered under the Indian Act (about 558,000) and that produced by the Indian register maintained by the Department of Indian Affairs and Northern Development (about 681,000)."

Although we choose to follow the Census definition of "Aboriginal," we also note that there is usually an under-enumeration figure of from 2 per cent to 3 per cent for persons enumerated regardless of ethnic background. In 1996, for example, the population estimate for Canada was 2.6 per cent higher than the population enumerated in the census (Statistics Canada, n.d). In other words, the choice to follow the Census lends to a conservative (yet inclusive) estimate of the Aboriginal population as a whole.

Given our choice to use the 2001 Census data, it is important to highlight some of the limitations in doing so. Aside from the general limitation of Census data underestimating the actual total population, Statistics Canada (2003a) notes that, while some people are not counted for a number of reasons (for example, they may have been between households when the census was being conducted) "undercoverage [of the Aboriginal population] in the 2001 was considerably higher among Aboriginal people than among other segments of the population" because "enumeration was not permitted, or was interrupted before it could be completed, on 30 Indian reserves and settlements."

Projections of demographic profiles are made, covering 2002-2021, using a natural growth rate for the 2001 Saskatchewan Aboriginal population of 2.21 per cent, 2.63 per cent for the North American Indian (First Nations) population, and 1.29 per cent for the Metis population. The natural growth rate for the Saskatchewan non-Aboriginal population is (negative) –0.089 per cent; the natural growth rate for the total population of Saskatchewan (Aboriginal and non-Aboriginal) is 0.28 per cent, starting in 2001 at 978,938 and ending 2021 at 1,035,412 a difference of only 56,474 (all of which is a part of the Aboriginal increase).

We use the natural growth rate and not the growth rate of Aboriginal peoples from 1996-2001 because the inflated growth rate (3.2 per cent) in that period was due to other factors in addition to natural growth, factors which would not typically or necessarily recur or continue at the same rate over the next twenty years. Those factors include fuller enumeration of reserves in 2001 and increased willingness of people to identify as Aboriginal perhaps as a result of cultural renewal in the wake of RCAP. It is important to note that a number of studies (including FSIN, 1996) have over-estimated their forecasts of growth in the Aboriginal population by using Census data that includes more than births and deaths (especially increases in identification after Bill C-31 extending status to women and children previously disenfranchised under the *Indian Act*).

In the case of statistics related to youth participation in the justice system, it is important to recognize that the figures are inflated by the practice of registering different levels of supervision (remand, open custody, probation, for example) as separate admissions to corrections (Statistics Canada, 2003a). In contrast, figures may be underestimated because not all participants self-identify as First Nations

or Metis—and indeed not all jurisdictions are equally interested to identify whether or not participants are Aboriginal. That, in Saskatchewan, Aboriginal participation in the justice system (currently ranging from 52 per cent in policing to 76 per cent in federal incarceration) is big business is added incentive in this jurisdiction to attend to issues of Aboriginal identification, though not equally or consistently across the six cost areas of the administration of justice in Saskatchewan. For instance, people of Aboriginal identity are systematically tracked in provincial and federal corrections, but not to the same extent in policing, prosecutions, courts, or legal aid.

The participation rate of Aboriginal peoples in federal and provincial corrections (institutions and community supervision) has been tracked and forms the basis of participation projections. For the purposes of the report, given the absence of consistent tracking of Aboriginal participation in policing, prosecutions, courts, and legal aid, we had to rely on information in Quann & Trevethan (2000). They find that 52 per cent of accused of crimes in Saskatchewan were of "a known Aboriginal status in 1997," though their own figures are based only on police-reported Aboriginal participation in crime in urban centres: Prince Albert, Regina, and Saskatoon. Though these numbers are problematic in their assumptions, these assumptions do in turn impact—arguably, disproportionately as a result of systemic disadvantage—on Aboriginal participation in prosecutions, courts, and legal aid. In fact, Aboriginal participation in these areas is somewhere between the 52 per cent accused figure and the 76 per cent in correctional facilities and community supervision.

In assessing Aboriginal participation and justice costs in the six cost areas over time, forecasting growth rates differ from one cost area to another because the historic cost trends differ. For example, legal aid resources have not shown growth over the last 10 years, while court costs have grown exponentially. As well, participation rates differ for Aboriginal youth as opposed to adults: the cohort of Aboriginal youth (12-17 years of age) grows at a slower rate from 2002 to 2021 than the adult cohort (18+) because the Aboriginal baby boom (from the late 1960s) is aging. The different participation growth rates in turn affect the growth of the Aboriginal proportion of costs for all six justice cost areas.

Costs are represented in 2001 constant dollars discounted at 2, 3, and 4 per cent. The 3per cent inflation or discount rate is that used widely by economists in forecasting inflation and recommended in McKeague, N. R. (2002). *The Queen's Bench Rules of Saskatchewan*, Rule 284(b):

> **three per cent per annum is admissible in evidence as the rate of interest to be used in determining the capitalized value of an award in respect of future pecuniary damages to the extent that it reflects the difference between estimated investment and price inflation rates.**

Costing Terminology

Total cost tables reflect figures based on historical data trends (1996 to 2001) or other if the five years of data is missing (for example, costs for courts and

prosecutions are collected every 2 years). Costs are projected using different **constant dollar** rates (using **discount or inflation** rates of 2 per cent, 3 per cent, and 4 per cent). 2 per cent and 4 per cent were chosen as minimum and maximum rates, yielding the worst-case and best-case scenarios, respectively. Currently, the consumer price index rate is closer to the 2 per cent inflation rate.

Constant dollar refers to a condition in which inflation or escalation is not applicable. Prices and costs are de-escalated or re-escalated to a single point in time.

The economic example used to explain **discount or inflation rates** goes as follows. If you buy a basket of goods (or hockey stick) today, what does it cost? And, how much do you think you would have to pay for the same basket of goods (or hockey stick) next year, or in 20 years? Obviously it will cost more, but how much more. That depends on the discount rate used.

Inflation is the rate at which the general level of prices for goods and services is rising.

We also refer to **nominal dollar rates.** Here we assume that a dollar today is worth a dollar tomorrow. The costs associated with corrections, for example, will continue to rise (for a number of reasons – more participants, union raises, etc.), so the cost of doing business next year will be higher. BUT, there is no discount rate. Essentially, the discount rate is at 0.00 per cent, meaning that if the cost of a service increases historically by 5 per cent, it will continue to do that. If in 2001 the cost was $100, next year it will be $105 (+5 per cent). The same service discounted at 2 per cent would be $103 the following year (plus 5 per cent minus 2 per cent equals a 3 per cent increase). At 3 per cent the new cost would be $102.

Nominal Dollars = Dollars that are not adjusted for inflation.

For the total cost table, the **Aboriginal proportion of the policing** costs was based on an assumed 2001 number of **Aboriginal peoples accused** (52 per cent) in relation to **non-Aboriginal peoples accused** (48 per cent). This is then "grown" out over the 20-year period by the rate of growth in the Aboriginal population of Saskatchewan (=2.21). The rates came from the most recent and extensive (of three) reports on Aboriginal crime in Saskatchewan (Quann & Trevethan, 2000).

Legal aid, prosecutions, and court costs are based on the assumption that the rates will increase in relation to the rate of increase of policing (which is based on accused statistics).

Aboriginal costs represent a proportion of the total costs, grown at a rate representative of the particular population in question (as follows).

- We grew the costs related to Aboriginal youth incarceration (provincial) by the growth rate for Aboriginal youth (12 to 17 years of age) in the province = .97 per cent **(note: the low growth rate because natural growth rate levels out over the 20-year period, 2001 to 2021).**

- We grew the Aboriginal Adult corrections costs (provincial and federal) by the provincial Aboriginal rate of growth for the cohort 18 to 50 years of age = 2.34 per cent **(note: this rate of growth is higher because the Aboriginal baby boom age-group moves out of the 12 to 17 year age-group during the time-period covered, 2001 to 2021).**

- We grew the Aboriginal policing, legal aid, prosecutions and court costs by the provincial Aboriginal rate of growth for Aboriginal peoples (total) = 2.21 **(note: this rate represents a medium growth rate).**

When looking at forecast growth rates of the Aboriginal population, we choose to focus on the "Natural Rate of Growth", which refers specifically to *births minus deaths*. **Birth and death rates are, in turn, determined by fertility and mortality rates.** The analysis does not account for immigration/emigration, enumeration issues, or the issue of increasing and decreasing numbers due to *ethnic shift* (where people define themselves differently as a result of changing legal categories, self-identification or other reasons, such as pride of identification, or identification for self-interest (ability to access funding or programs, etc.).

In addition, our report highlights a number of scenarios from best to worst case and identifies related strategies for change—what policy makers and politicians might do to galvanize change and what changes will be most productive and cost-effective. In the end, the report offers the Commissioners frameworks as well as detailed data to support their arguments for change.

3.0 Popular Myths and Powerful Realities

If misconceptions, myths, and fears motivate oversimplified responses to justice issues and polarize opinion, they also undermine confidence in the administration of justice. No jurisdiction can operate effectively without the public trust. Nor can any jurisdiction afford the human costs of such ignorance—or the economic consequences of decisions it licenses. In this section we address some of the most damaging myths that obscure what we all have to gain from change.

Myth #1: Canada has and should have only one system of justice.

- In his dissenting opinion in *R. v. Morin* [1995], Justice Bayda stressed that there may be "only one system of justice," but "an objective onlooker unfamiliar with our society would be surprised to learn that was the case were he or she to look only at the consequences or products produced by the system of justice. From the prospective of consequences we appear to have two systems of justice."

Myth #2: All Canadians are or should be equal before 'the' law.

- "The present system fails the Aboriginal peoples. . . . the current regime fails to respect the Charter's guarantees of equality and fundamental justice in a number of important respects" (Law Commission of Canada, 1991, 16, 75).

- "Aboriginal peoples have experienced the most entrenched racial discrimination of any group in Canada. Discrimination against Aboriginal people has been a central policy of Canadian governments since Confederation. . . . In short, the current court system is inefficient, insensitive and, when compared to the service provided to non-Aboriginal people, decidedly unequal." (Hamilton and Sinclair, 1991).

Myth # 3: Aboriginal peoples are treated preferentially by the justice system.

According to the Canadian Criminal Justice Association (2000), Aboriginal people experience overt and systemic racism within the justice system with these particular results:

- Aboriginal accused are more likely to be denied bail.

- Aboriginal people spend more time in pre-trial detention.

- Aboriginal people are less likely to have legal representation at court proceedings.

- Aboriginal clients, especially in the North, spend less time with their lawyers.

- Aboriginal offenders are more than twice as likely to be incarcerated than non-Aboriginal offenders.

- Aboriginal Elders are not accorded the same status as other spiritual leaders, priests and chaplains.

- Aboriginal people often plead guilty because they feel intimidated by court proceedings and want them over.

Myth # 4: The administration of justice requires jurisdictional clarity: Canada cannot afford to add jurisdictional powers to Aboriginal peoples.

- The *Constitution Act, 1867* entailed a complex division of powers and responsibilities on justice between federal and provincial governments (with great diversity among the latter) and even concurrent jurisdictions among municipal, federal, and provincial policing (Gosse, Henderson, & Carter, 1994).

- "In reality, there are already many criminal law authorities in Canada. . . . Canadians do not complain loudly about the separate criminal law jurisdiction held by the military. . . . . Canadians do not question the general workability of the civil and common law traditions in this country" (Monture-Angus, 1995).

- Likewise Hamilton and Sinclair (1991) recognize in the fact of "fully functioning tribal court systems on a variety of Indian reservations in the United States, many of them similar in size and socio-economic status" to Indian reserves in Manitoba "strong evidence that separate Aboriginal justice systems are possible and practical."

- In addition, Hamilton and Sinclair (1991) find support for a separate court system in the persistence of the section 107 court of the *Indian Act*:

> **The section 107 court remains in the statute as a vestige of the ignominious past of federal colonization and domination of reserve life. . . . The restrictions that exist in the Act are such that it offers little promise for the long-term future and is unlikely to satisfy current demands from First Nations to establish their own justice system. At most, it offers a short-term interim measure and an indication that a separate court system can function readily on Indian reserves without causing grave concerns within the rest of society or the legal community.**

Myth # 5: Crime rates are increasing dramatically.

- National crime rate decreasing by 2.8 per cent annually from 1992 to 2001. (CCJS, Statistics Canada)

- Saskatchewan has the highest crime rate of the provinces (lowest in rural, agricultural communities in the south and highest in the north), though victims are disproportionately poor and Aboriginal peoples.

Myth # 6: Violent crime is increasing substantially in Canada.

- Even though violent crime rose by 3 per cent in 2000, it remains only 13 per cent of the 2.4 million Criminal Code incidents (excluding traffic and drugs) (Correctional Service Canada, 2000).

Myth #7: Most violent crimes involve weapons.

- In 2000, only 15 per cent of violent crime involved a weapon—a reduction from 20 per cent in 1995 (Correctional Services Canada, 2000).

Myth #8: Most homicides are committed by strangers.

- Only 17 per cent of solved homicides in 2000 were committed by strangers; 32.3 per cent by family members, and 50.5 per cent by acquaintances (Correctional Services Canada, 2000).

Myth # 9: Most sexual assaults against women are committed by strangers.

- In 1999, 23 per cent were committed by strangers; 32 per cent by acquaintances, and 24 per cent by family members (Correctional Services Canada, 2000).

Myth # 10: Crime is an urban phenomenon.

- A 2000 study of 25 Census Metropolitan Areas showed rates of Criminal Code violations in urban areas similar to those in smaller cities, towns, and rural areas (Correctional Services Canada, 2000).

Myth # 11: Most youth crime involves violence.

- In 2000, 22.4 per cent youth offenders were charged with violent crime; 50 per cent of those were minor assaults.

Myth # 12: Targets of youth crime are predominantly adults and elderly.

- 52 per cent of victims of violent youth crime are other youths.
- Children younger than 12 years account for 11 per cent of victims.
- Only 2 per cent of victims of youth violent crime were 55 or over. *(*CCJS, Statistics Canada)

Myth # 13: High income earners are at greatest risk of violent victimization.

- Low household income is associated with violent victimization.
- The rate of victimization of lowest household income category (192 per 100,000) double that of other categories.
- High household income is associated with property crime. *(*CCJS, Statistics Canada)

Myth # 14: High income earners report highest fears of crime.

- Those in lowest income bracket twice as likely as those in highest brackets to believe crime is higher in their neighbourhood.
- Perception of safety increases with income. (CCJS, Statistics Canada)

Myth # 15: Victims of crime are largely non-Aboriginal.

- 206 per 1,000 Aboriginal people (over 15 years of age) are victims of crime.

- 81 per 1,000 non-Aboriginal people and 39 immigrants per 1,000 (over 15 years of age) are victims of crime, according to the General Social Survey, 1999. (CCJS, 2001b)

Myth # 16: *Courts are too lenient on offenders.*

- Canada is a world leader in incarcerating 118 per 100,000 general population.

- Canada incarcerates youth at a rate four times that of adults and twice that of many states (Anne McLellan; qtd. in Green and Healy, 2003).

- Saskatchewan incarcerates more youth per capita than any other jurisdiction in Canada (an estimated 75 per cent Aboriginal). (Green & Healy, 2003)

Myth # 17: Aboriginal offenders represent the largest proportion of inmates in correctional institutions.

- Non-Aboriginal inmates account for 83 per cent of the inmate population. (CCJS, 2001a)

- Aboriginal inmates represented 76 per cent of adult provincial inmates in Saskatchewan, 1998 – 99 (CCJS, 2001a)

Myth # 18: Severer sentences deter criminals from offending.

- Empirical evidence in U.S., Canada, and Europe over the last 30 years shows longer sentences do not reduce recidivism.

- Empirical evidence in U.S., Canada, and Europe over the last 30 years shows longer sentences may increase recidivism.

- The certainty rather than the severity of punishment exerts greater deterrent power.

- Study of 442,000 offenders showed harsher sanctions had no deterrent effect on recidivism; punishment increased recidivism by 3 per cent (findings consistent across adult/youth, male/female, Caucasian/minority). (Correctional Services Canada, 2000; Smith, Goggin, & Gendreau, 2002).

Myth # 19: Most women offenders have served a previous federal sentence.

- As of September 1999, 85.9 per cent of women offenders serving their first federal sentence.

- 9.9 per cent serving 2nd and only 4.2 per cent serving 3rd or higher (CSC, n.d.)

Myth # 20: Correctional programming to rehabilitate offenders is a waste of money.

- Research on targeted programs shows that participating offenders are less likely to re-offend; high-risk offender participation associated with 50 per cent reduction in recidivism (Correctional Services Canada, 2000).

- Hollow Water's Community Holistic Circle Healing (CHCH) saves money

    - for every $1 contributed by provincial government saved $3.75 for pre-incarceration, prison, and probation costs.

    - for every federal dollar, it would have spent $2-$12 on incarceration and parole costs.

    - for every $2 the government spends, the community receives between $6 and $15 worth of services and value-added benefits. (Couture, Parker, Couture, & Laboucane, 2001)

Myth # 21: Most offenders commit new crimes during parole.

- 74.2 per cent of 1,796 parole cases in 2000-2001 were successfully completed.

- 16 per cent had parole revoked for breach of conditions and were hence prevented from committing new crimes.

- 8.4 per cent had parole revoked for commission of new non-violent crime.

- 1.4 per cent had parole revoked for new violent offences. (Correctional Services Canada, 2000)

Myth # 22: Aboriginal offenders have less parole success.

- Aboriginal men have 82 per cent successful completion.

- 13 per cent Aboriginal men revoked for violation of conditions.

- 6 per cent revoked for new offence (85 per cent non-violent).

- Aboriginal women have 81 per cent successful completion.
- 12 per cent Aboriginal women revoked for violation of conditions.
- 7 per cent Aboriginal women revoked for new offence (100 per cent non-violent). (Correctional Service Canada, 2001)

4.0 Demographics

> **Passage of the first *Indian Act* in 1876 put in place a regime of distinctions among Aboriginal Peoples that politically, administratively, and viscerally divide Aboriginal people to this day.** (Gibbins, 1997)

Demographic analyses and projections importantly illustrate the nature of the systemic barriers that First Nations and Metis people in Canada face, the force of the legal definition of identity, implications of the reinstatement of status via Bill C-31 and of self-reporting, and the power of statistical tracking. Demographic representation remains constrained by the forms of data collection, including what is and is not collected, what is and what is not rendered visible, but also by the colonial categories and simplifications of complex identities (collapsed into Aboriginal/non-Aboriginal, for instance). The brutal simplifications of demographic data have in turn been inclined to misrepresent the Aboriginal "problem" and obscure rich resources, the capacities, successes, and achievements of Aboriginal adults and youth—and with profound implications for policy. To counter these dominant reporting trends, we aim to unpack assumptions underlying the data, draw on qualitative as well as quantitative measures, and include multiple categories of identity wherever possible (age, gender, abilities, education, etc.) in order to highlight some key factors that aid understanding and direct us to areas for and means of change.

Definitions: Aboriginal population

There are many ways of defining the Aboriginal population, which can result in different estimates of its size. There is no single or "correct" definition of the Aboriginal population and the choice of a definition depends on the purpose for which it is to be used. Different definitions/counts are used depending on the focus and requirements of the user.

The 2001 Census provides data that are based on the definitions of ethnic origin (ancestry), Aboriginal Identity, Registered Indian, and band membership. The January 21, 2003 release uses mostly the Aboriginal Identity concept to provide a demographic profile of the Aboriginal population. Subsequent releases will provide additional data on the Aboriginal peoples of Canada and their socio-economic characteristics.

Aboriginal Origin (Ancestry) refers to those persons who reported at least one Aboriginal origin (North American Indian, Metis or Inuit) on the ethnic origin question in the Census. The question asks about the ethnic or cultural group(s) to which the respondent's ancestors belong.

Aboriginal Identity refers to those persons who reported identifying with at least one Aboriginal group, i.e. North American Indian, Metis or Inuit. Also included are individuals who did not report an Aboriginal identity, but did report themselves as a Registered or Treaty Indian, and/or band or First Nation membership.

Registered, status or treaty Indian refers to those who reported they were registered under the Indian Act of Canada. Treaty Indians are persons who are registered under the Indian Act of Canada and can prove descent from a band that signed a treaty. The term ''treaty Indian'' is more widely used in the Prairie provinces.

Member of an Indian band or First Nation refers to those persons who reported being a member of an Indian band or a First Nation of Canada.

Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

Registered Indian refers to a person of status within the meaning of the *Indian Act*, whose name appears on the Indian Register as maintained by Indian and Northern Affairs Canada (INAC), is a registered Indian. In 2001 Registered Indians were affiliated with one of the 612 bands located across Canada.

Source: Department of Indian Affairs and Northern Development (DIAND). (2003). Basic Departmental Data – 2002.

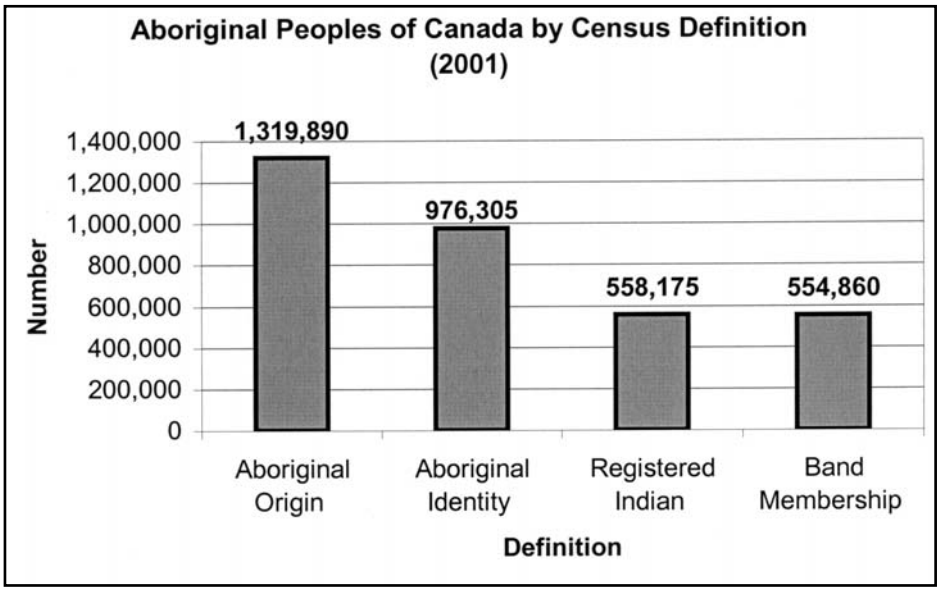


Figure 1-Source: Statistics Canada. (2003). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

Figure 2 shows how the numbers reporting Aboriginal origin and Aboriginal Identity have changed from the1996 Census to the 2001 Census.

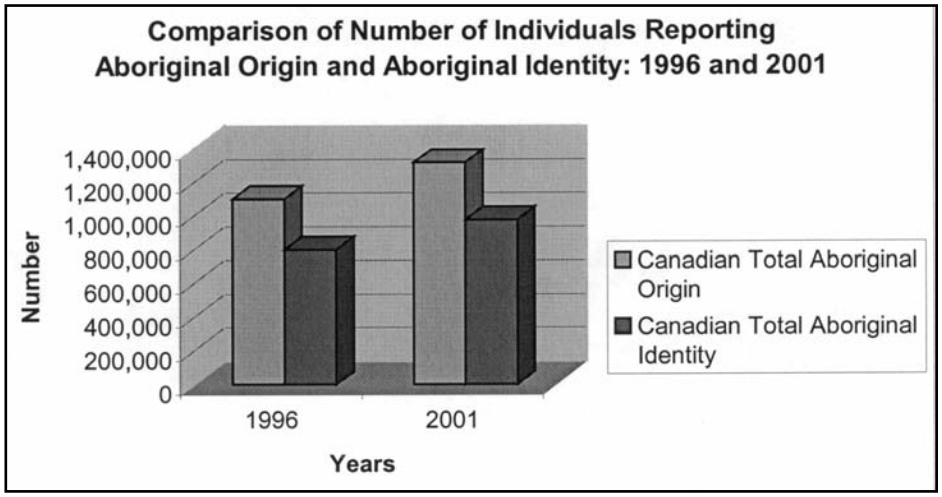


Figure 2–Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

4.1 Aboriginal and Non-Aboriginal Peoples of Canada

> **The increasing diversity of the urban population and changing concepts of social belonging require a focus both on urban neighbourhoods, as geographic spaces, and on communities of interest based on a variety of affiliations.** (Graham & Peters, 2002)

The Aboriginal population is both younger and growing faster than the general population (median age 37.7 years), the median age in Canada 24.7 years, and in Saskatchewan 20.1 years, while almost 40 per cent of Aboriginal youth in Saskatchewan were 14 years of age and under in 2001 (Statistics Canada, 2003b).

The population of Canada is also overwhelmingly urban: 79.4 per cent in the 2001 Census; between 1951 and 1996, the urban Aboriginal population grew from 7 to almost 50 per cent, non-Status Indians representing the largest proportion (73 per cent). While disadvantage, discrimination, and racism persist, there are also renewed efforts to value and celebrate our differences as competitive advantages, as community development capacity, as critical elements in a renaissance of "civic culture," and as holistic response to "the livable city" (Graham & Peters, 2002). And research emphasizing a focus on communities and not individuals suggests renewed capacities for safe, secure, and stable communities and economic development (LaPrairie, 1995).

Figure 3 presents Census 1996 and 2001 data on Aboriginal identification in Canada. Of the 976,305 people that reported Aboriginal identity in 2001, 608,850 identified with North American Indian (N. A. Indian); 292,310 with Metis; 45,070 with Inuit; and 30,075 with Other persons include those that reported more than one Aboriginal identity group so that the numbers do not add up to the total because of double counting.

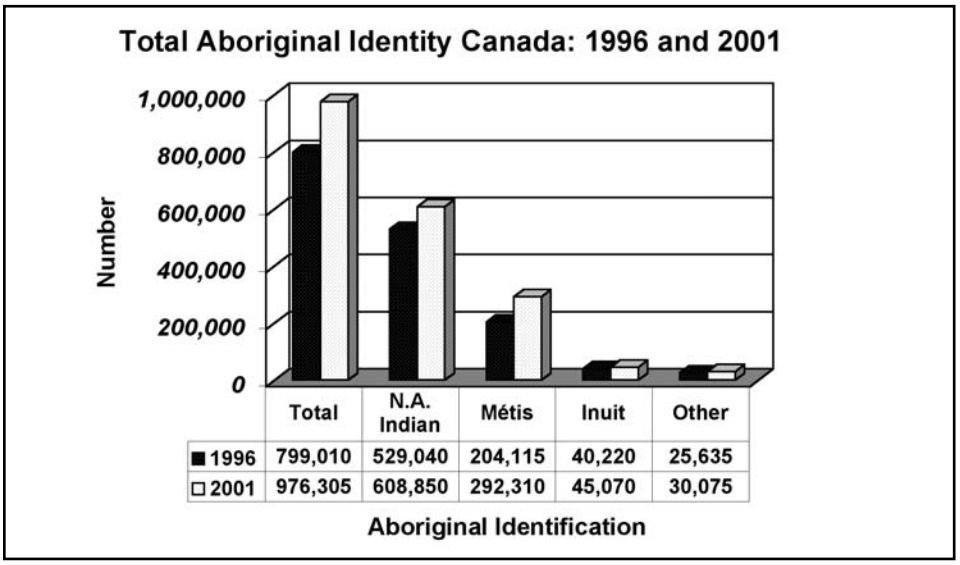


Figure 3–Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

Understanding the demographic data means understanding the mobility of the Aboriginal population, one in five moving in the twelve months before the 2001 Census (as opposed to one in seven in the general population and one in ten moving to and from urban centres (Chalifoux & Johnson, 2003). Mobility and migration patterns of Aboriginal peoples in turn aggravates barriers to access to program and service delivery whether health, housing, social services, training and education—and with significant consequences for the health and well-being of the community. The effect of net migration statistics (that are currently unable to distinguish patterns of mobility across first-time, second-generation, etc. urban residents) is to mask for policy-makers the reality of movement within and between urban centres rather than "mass exoduses" from reserves. And the statistics likewise obscure the challenges to the younger demographic and lone parents in this urban migrant group—especially threats to culture, family, and income, as well as high victimization and crime—contributing further to cycles of movement and isolation (Chalifoux & Johnson, 2003).

When behaviour outstrips the ability of professionals to monitor and manage it, it is tempting to re-confine it within outmoded categories—in this case the narrative of "mass exodus" from reserve to city that replays and intensifies anxieties that attended the rapid urbanization of rural populations in nineteenth-century Europe, anxieties that played a major role in the establishment of reserves in Canada in the first place.

And an already difficult situation is aggravated by the jurisdictional ambiguities and reduced role and responsibilities of the federal government in the lives of urban Aboriginal peoples. Not surprisingly, in addition to high levels of unemployment and poverty, the following disparities in health are noted (Chalifoux & Johnson, 2003):

Mental and Physical Health

- Off-reserve Aboriginal population experience major depressive episodes 1.5 times more often than non-Aboriginal
- Off-reserve Aboriginal population 1.5 times more likely to report fair or poor health
- Off-reserve Aboriginal population 1.5 times more likely to report one or more chronic conditions (diabetes, high blood pressure, or arthritis)
- Off-reserve Aboriginal population 1.4 times more likely to report long-term activity restriction

The following compelling statistics (CCJA, 2000) reveal the consequences, especially in the post-World War Two incarceration record, of new demographic profiles, new technology, and new justice system practices adding to rising expectations of Aboriginal veterans returning from the war. If high post-war birth numbers and increasing numbers entering teenage and young adult years (18-29) were associated with risk ((Boe, 2002), other factors included: new

energetic policing practices and agreements with the Royal Canadian Mounted Police to enforce Canadian law consistently where Aboriginal law had previously prevailed, as well as increased mobility with new highways and transportation, greater access to alcohol, and close oversight of social and family legislation (Hamilton and Sinclair, 1991):

Population:

- The Aboriginal population is growing faster than the non-Aboriginal population

Birth rate as per INAC figures:

- Fertility rate for Aboriginal women is 2.9 children (1.7 for non-Aboriginal)
- By 2005, registered Aboriginal population projected to rise to 755,200 (42 per cent increase since 1992)
- Projected Aboriginal population increase 50 per cent greater than non-Aboriginal population

Life expectancy:

- For Aboriginal men 7 years shorter than average non-Aboriginal Canadian
- For Aboriginal women 6.5 years shorter than average non-Aboriginal Canadian
- Inuit and reserve residents lowest life expectancy of all Aboriginal people
- Infant mortality rates for Status Indians 17 per 1000, 28 for Inuit, and 8 for all Canadians (1986 figures)
- Life expectancy increasing and infant mortality rates decreasing

Suicide:

- Suicide 2 to 3 times more common among Aboriginal than non-Aboriginal peoples
- Suicide 5 to 6 times more common among Aboriginal than non-Aboriginal youth
- Suicide per 100,000 (1986 figures): Status Indians, 34; Inuit (NWT), 54; all Canadians, 15

Incarceration:

- Before World War Two, Aboriginal population proportionate to numbers in population at large
- Since World War Two, Aboriginal participation has grown and continues to grow
- In 1997 Aboriginal offenders 12 per cent (but 3 per cent of general population)
- In 1997 highest percentage (64 per cent of federal offenders) in Prairie region
- Aboriginal offenders more likely to serve sentence in institutions than in community
- Aboriginal corrections staff 1.7 per cent of Correctional Service of Canada

4.2 Aboriginal and Non-Aboriginal Peoples of Saskatchewan

> **From a policy perspective, it is crucial that we recognize that the urban Aboriginal population in Canada is not distinct from the "non-urban." They are interconnected in terms of mobility, culture, and politics.** (Graham & Peters, 2002)

Demographic Considerations

2001 Census underestimates the total population by approximately 2 to 3 per cent and underestimates Aboriginal population in particular because some communities are not enumerated (in whole or part), some individuals and communities refuse to participate, some individuals do not have a permanent residence, others are between locations on Census day, and some people of Aboriginal descent do not self-identify (Statistics Canada, 2003a).

The Saskatchewan population forecasts (2002-2021) are based on natural growth rates (births minus deaths). The birth rates for Aboriginal (North American Indian and Metis) women (15-35 years of age) are derived from 2001 Census data: the birth rate for North American Indian women is 16.72 per cent and for Metis women 9.70 per cent.

Mortality rates for non-Aboriginal peoples are based on information provided by Statistics Canada, Health Statistics Division; mortality rates for Aboriginal peoples are derived from First Nations on-reserve data provided by Health Canada (2003).

Especially relevant to decoding the data in the following figures and tables is an understanding of the issues not only of colonial identity categories and self-identification and the confusions and contradictions of jurisdictional ambiguities, but also of the conspicuous mobility of the Aboriginal population—one in five (one in seven in general population) moving in the twelve months before the 2001 Census and one in ten moving to and from urban centres (Chalifoux & Johnson, 2003).

Saskatchewan's *Metis and Off-Reserve First Nations Strategy* is one promising initiative to acknowledge that Aboriginal and treaty rights "are not confined to the boundaries of the reserve" and to address not only the needs of those caught in a "jurisdictional 'no man's land," but also "by extension, the social and economic well-being of the broader community" (Chalifoux & Johnson, 2003). The strategy, according to Brent Cotter, Deputy Minister, Government Relations and Aboriginal Affairs, Government of Saskatchewan, is about social inclusion and health:

> **Our future in Saskatchewan depends on our ability to ensure that Aboriginal and non-Aboriginal people no longer live in cultures that are isolated from one another. . . . It is fundamentally important for the social health of our communities, and beyond, in Saskatchewan that we find healthy ways for that integration, that intersection of two cultures, two societies, and in many cases two races, to be positive and constructive rather than negative and dysfunctional.** (qtd. in Chalifoux & Johnson, 2003)

Mortality rates among Aboriginal peoples are lower than the non-Aboriginal rates because of the larger proportion of people aged 65 + in the non-Aboriginal population. Over the next 20 years, the fertility rate among Aboriginal women is predicted to decrease as a result of increased education and labour force participation. At the same time, the mortality rate for the Aboriginal population will increase as the mean age of Aboriginal peoples increases. In other words, the Aboriginal population is not going to keep growing at current rates; it will level out.

The natural growth rate for the Saskatchewan Aboriginal population is 2.21 per cent; 2.63 per cent for the North American population, and 1.29 per cent for the Metis population. The natural growth rate for the non-Aboriginal population is (negative) –0.089 per cent.

The following five figures based on the 2001 Census represent the population reporting Aboriginal identity by province (Figure 4); population reporting North American Indian identity by province (Figure 5); population reporting Metis identity by province (Figure 6); median age Aboriginal and non-Aboriginal populations by province (Figure 7); and median age North American Indian and non-Aboriginal populations by province (Figure 8).

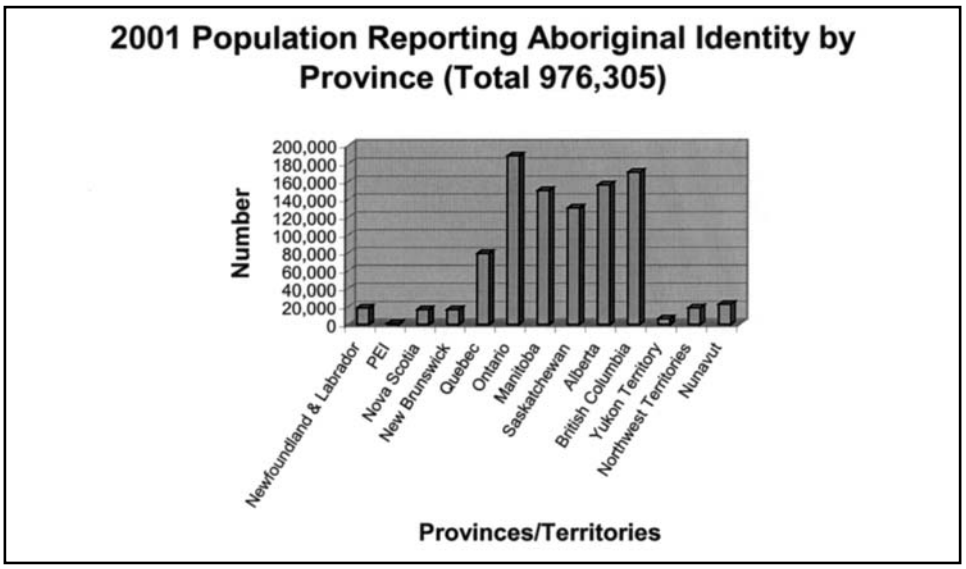


Figure 4–Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

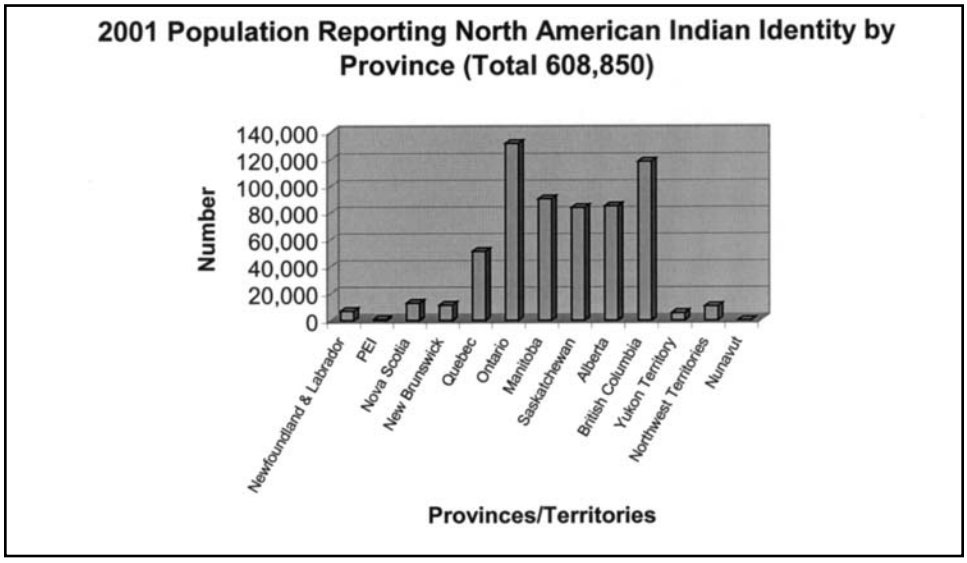


Figure 5–Source: Statistics Canada.(2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

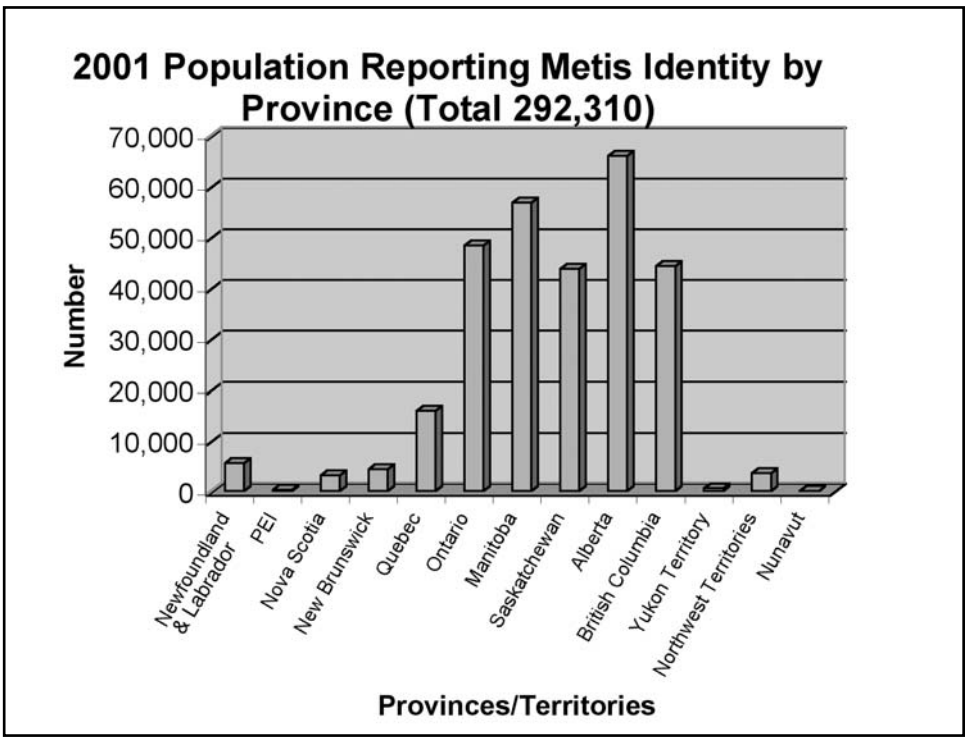


Figure 6–Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

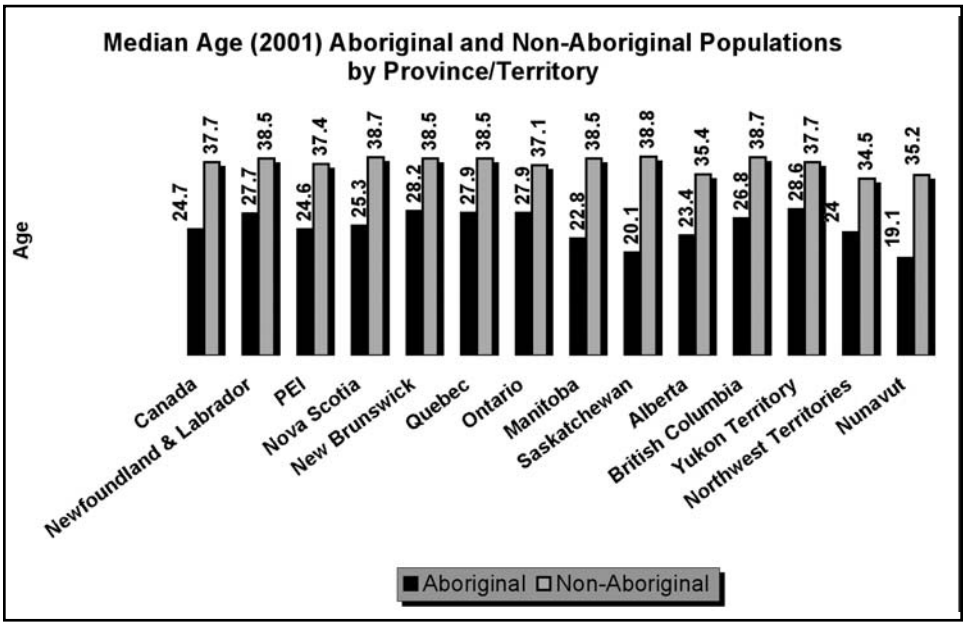


Figure 7–Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

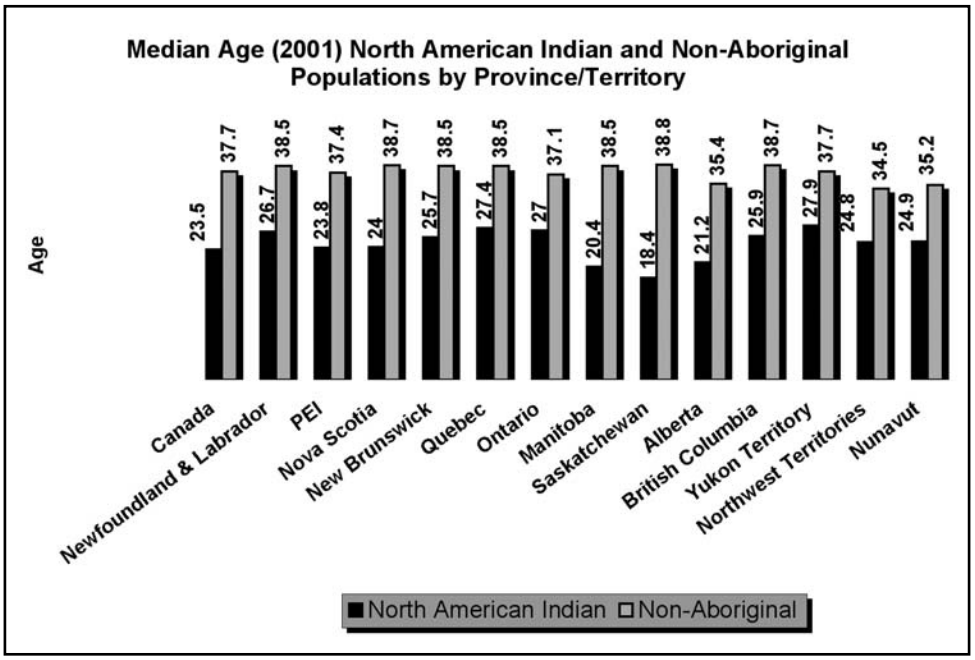
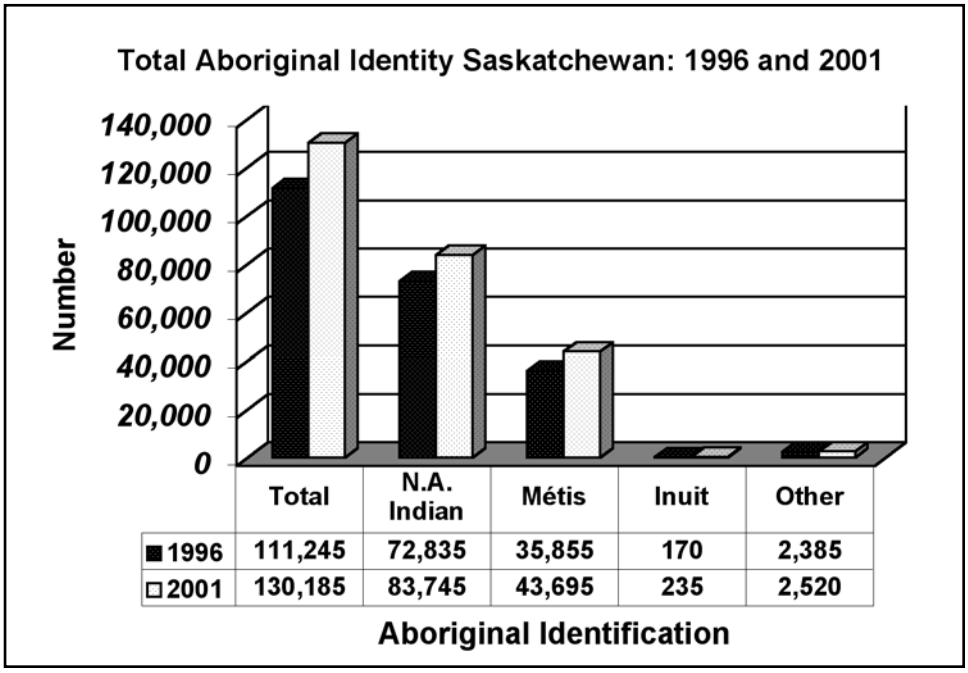


Figure 8–Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

Figure 9 presents Census 1996 and 2001 data on Aboriginal identification in Saskatchewan.



	Total	N.A. Indian	Métis	Inuit	Other
1996	111,245	72,835	35,855	170	2,385
2001	130,185	83,745	43,695	235	2,520

Figure 9–Source: Statistics Canada. (2003a). 2001 Census: Aboriginal Identity Population, 2001 Counts, for Canada, Provinces and Territories – 20% Sample Data.

The data represented in Figure 9 is presented following in a pie-chart (Figure 10) to show the proportion of the population that reported an Aboriginal identity in Saskatchewan.

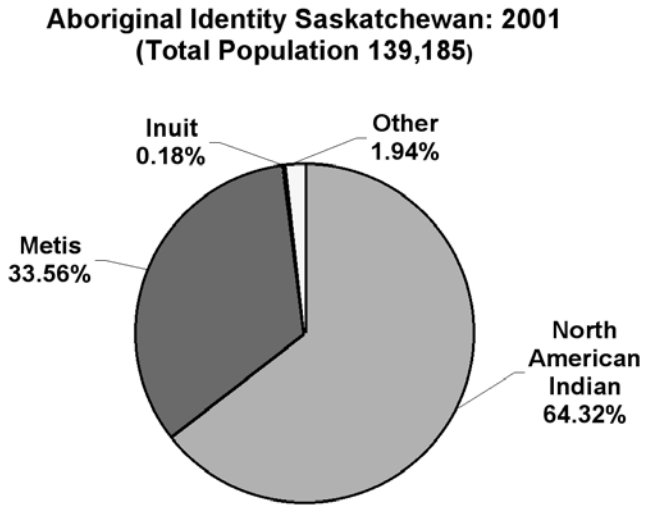


Figure 10–Source: Statistics Canada. (2003a). 2001 Census: Aboriginal Identity Population, 2001 Counts, for Canada, Provinces and Territories – 20% Sample Data.

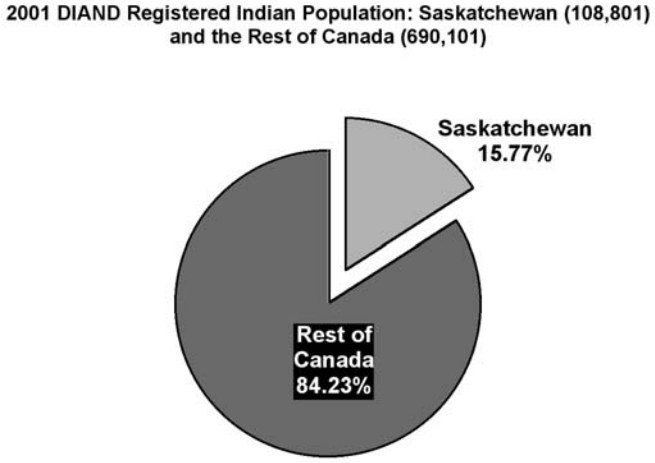


Figure 11–Source: Department of Indian Affairs and Northern Development (DIAND). (2003). Basic Departmental Data – 2002.

Figure 11 highlights the proportion of Status Indians registered with a Saskatchewan Indian band in the Department of Indian Affairs and Northern Development (DIAND) registry. According to DIAND statistics, the Registered Indian population in Saskatchewan numbers 108,801 (15% of the provincial population). Figure 9 provides a different number of individuals reporting North American Indian identification for the same year (83,745) because it is based on definitions provided in the 2001 Census. Figure 12 (below) compares DIAND and Statistics Canada data (1996 and 2001).

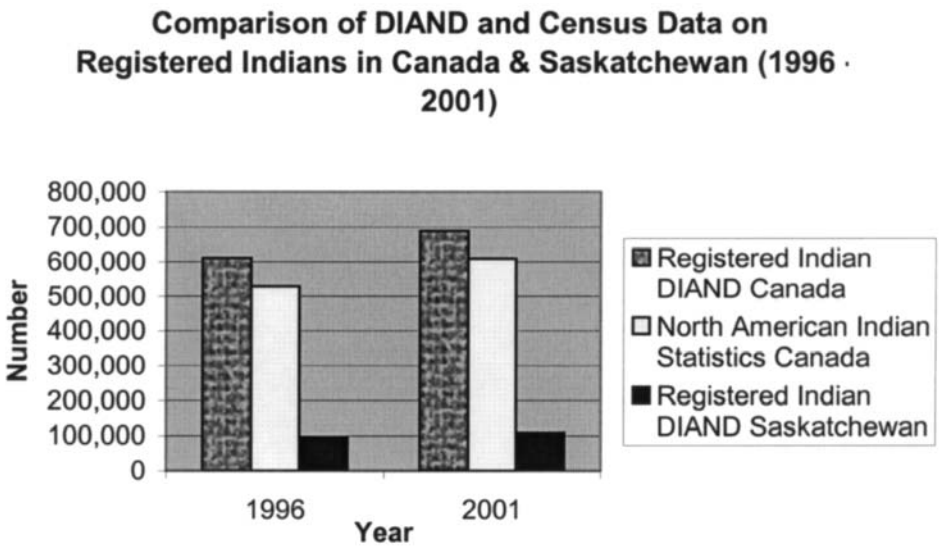


Figure 12–Sources: Department of Indian Affairs and Northern Development (DIAND). (2003). Basic Departmental Data – 2002, **and** Statistics Canada. (2003b). 2001 Census: Aboriginal Identity Population, 2001 Counts, for Canada, Provinces and Territories – 20% Sample Data.

Figures 13 and 14 represent those people reporting an Aboriginal identity as a proportion of all of the people living in selected Census Metropolitan Areas (CMA's) in Canada. Figure 13 reveals that, of the major CMA's (those with populations over 100,000), Saskatoon ranked first for its Aboriginal proportion of its total population in both the 1996 and 2001 Census counts, with 16,165 Aboriginal peoples making up 7.5 per cent of the total Saskatoon population (1996) and 20,275 Aboriginal peoples making up 9.1 per cent of the total Saskatoon population (2001). Regina ranked 3rd both years. Prince Albert ranked highest of all Metropolitan Areas (MA's, 10,000 population and higher) with an Aboriginal proportional representation of 24.9 per cent (1996) and 29.2 per cent (2001).

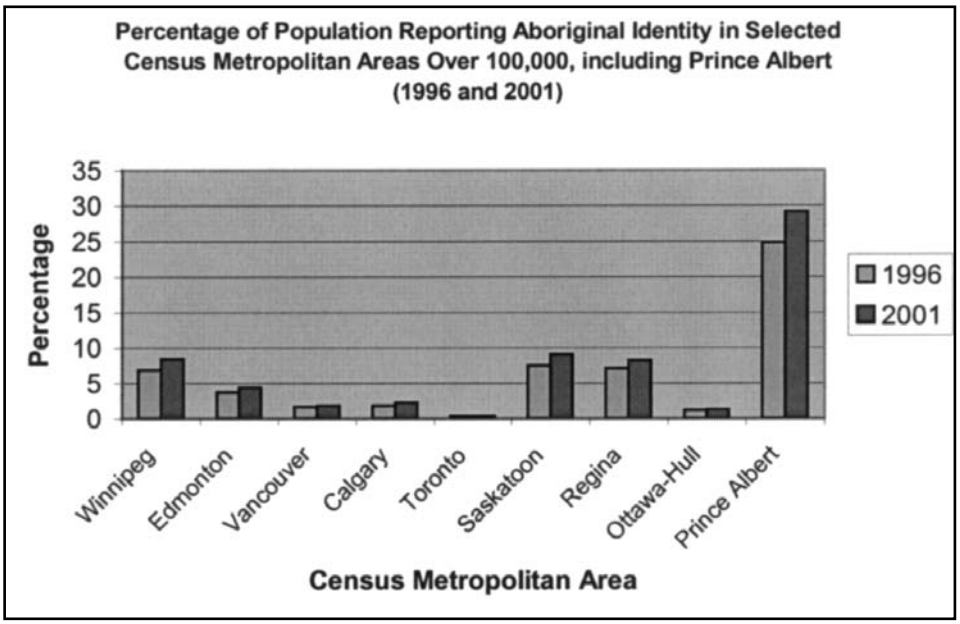


Figure 13–Source: Statistics Canada. (2003b). 2001 Census: Aboriginal Identity Population, 2001 Counts, for Canada, Provinces and Territories – 20% Sample Data.

Although Saskatoon, Winnipeg, and Regina ranked 1st, 2nd, and 3rd for their Aboriginal proportion of the total population, Winnipeg, Edmonton, and Vancouver ranked 1st, 2nd, and 3rd in actual numbers for their Aboriginal population with real numbers of 55,755 and 40,930 and 36,860 respectively.

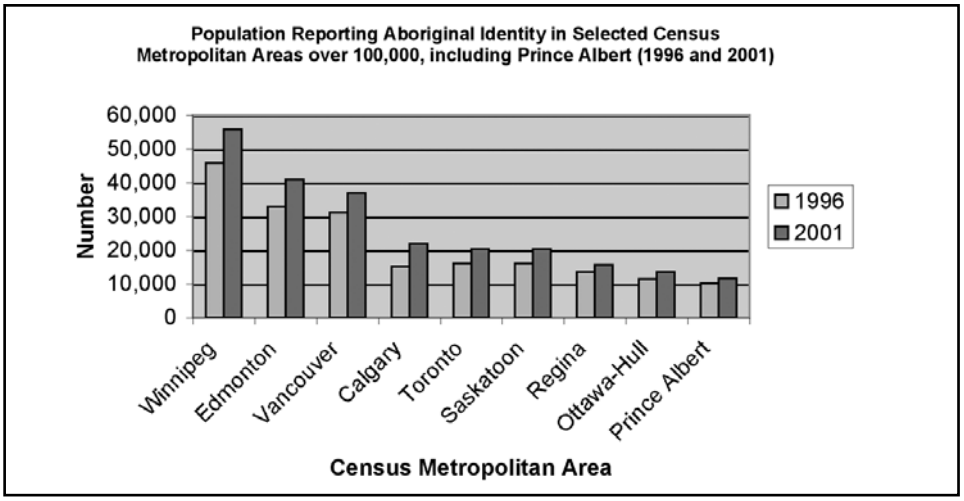


Figure 14–Source: Statistics Canada. (2003). 2001 Census: Aboriginal Identity Population, 2001 Counts, for Canada, Provinces and Territories – 20% Sample Data.

The following figure and table project population numbers for Aboriginal and non-Aboriginal peoples in Saskatchewan. The total number of non-Aboriginal peoples is forecast to decrease steadily over the next 20 years, from 978,938 in our base Census year (2001) to 833,813 in 2021. Alternatively, the Aboriginal population is forecast to increase from 130,195 in our base Census year (2001) to 201,600 in 2021 (see Figure 15).

The Aboriginal proportion of the total population is forecast to grow from 13.3 per cent in 2001 to 19.5 per cent in 2021, while the non-Aboriginal proportion of the total is forecast to decrease from 86.7 per cent in 2001 to 80.5 per cent in 2021. The proportion of male to female Aboriginal persons is forecast to remain fairly steady over the 20-year period (see Table 1). The projected growth rates of North American Indian and Metis peoples are presented in Table 2.

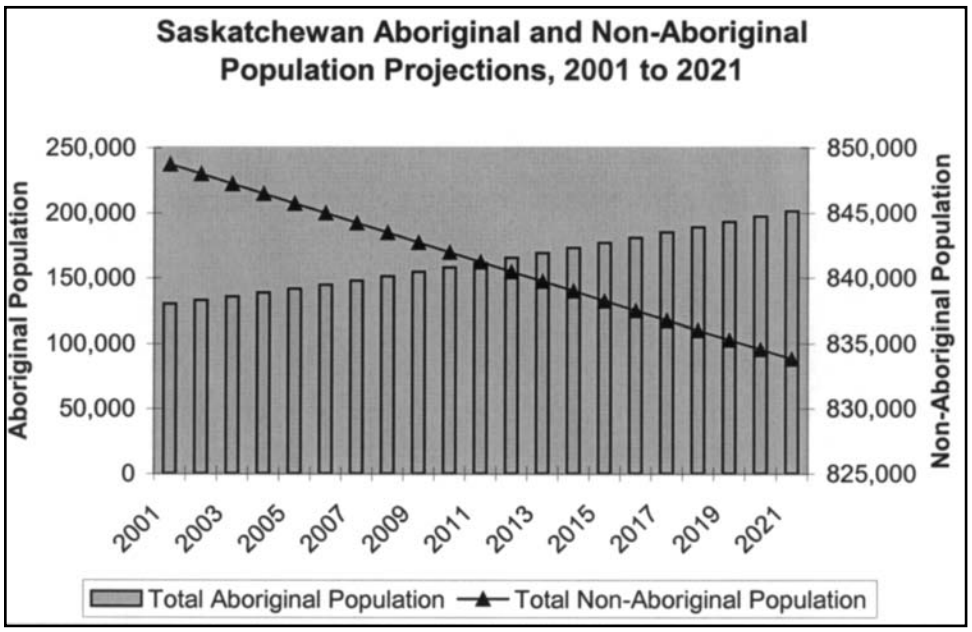


Figure 15

Following Table 1, Figures 16 and 17 show in graphic form the population forecasts for Saskatchewan, 2001 and 2021.

Table 1-Saskatchewan Aboriginal and Non-Aboriginal Population Projections: From 2001 (base year) to 2021

Year	Ttl Abor Males	Ttl Abor Females	Total Aboriginal Population	Total Non-Aboriginal Population	Total Sask Population	Percentage of Aboriginal Pop	Percentage of Non-Aboriginal Pop
2001	64056	66139	130195	848743	978938	13.30%	86.70%
2002	65409	67536	132946	847990	980936	13.55%	86.45%
2003	66806	68978	135784	847238	983022	13.81%	86.19%
2004	68241	70461	138702	846487	985188	14.08%	85.92%
2005	69723	71991	141714	845736	987449	14.35%	85.65%
2006	71256	73574	144830	844986	989816	14.63%	85.37%
2007	72842	75210	148052	844236	992288	14.92%	85.08%
2008	74469	76891	151361	843487	994848	15.21%	84.79%
2009	76142	78618	154761	842739	997500	15.51%	84.49%
2010	77869	80401	158270	841991	1000262	15.82%	84.18%
2011	79639	82229	161868	841245	1003112	16.14%	83.86%
2012	81456	84105	165560	840498	1006059	16.46%	83.54%
2013	83313	86022	169336	839753	1009088	16.78%	83.22%
2014	85208	87979	173186	839008	1012194	17.11%	82.89%
2015	87144	89978	177122	838264	1015386	17.44%	82.56%
2016	89099	91997	181096	837520	1018616	17.78%	82.22%
2017	91077	94039	185116	836777	1021894	18.12%	81.88%
2018	93073	96100	189173	836035	1025209	18.45%	81.55%
2019	95089	98182	193271	835294	1028564	18.79%	81.21%
2020	97129	100288	197417	834553	1031970	19.13%	80.87%
2021	99187	102413	201600	833813	1035412	19.47%	80.53%

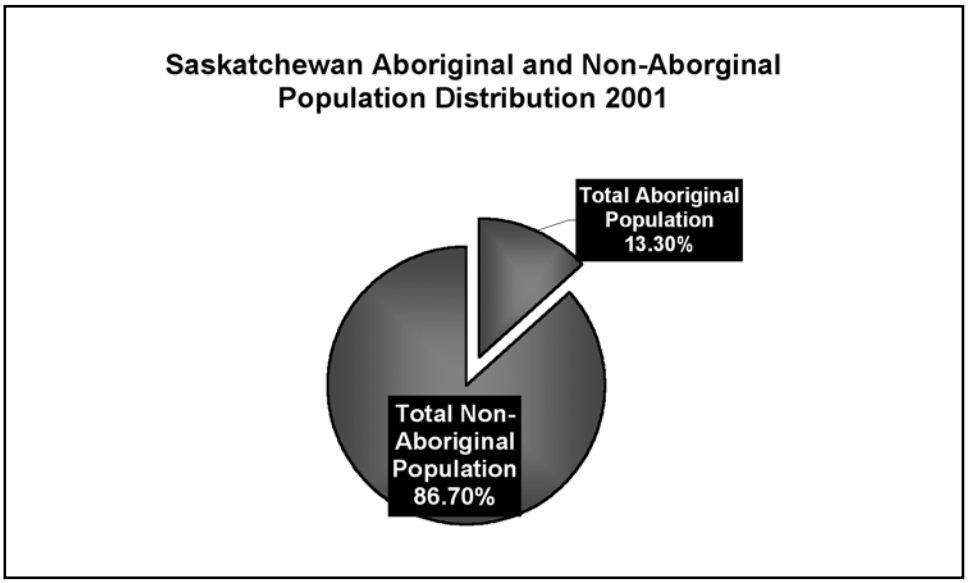


Figure 16

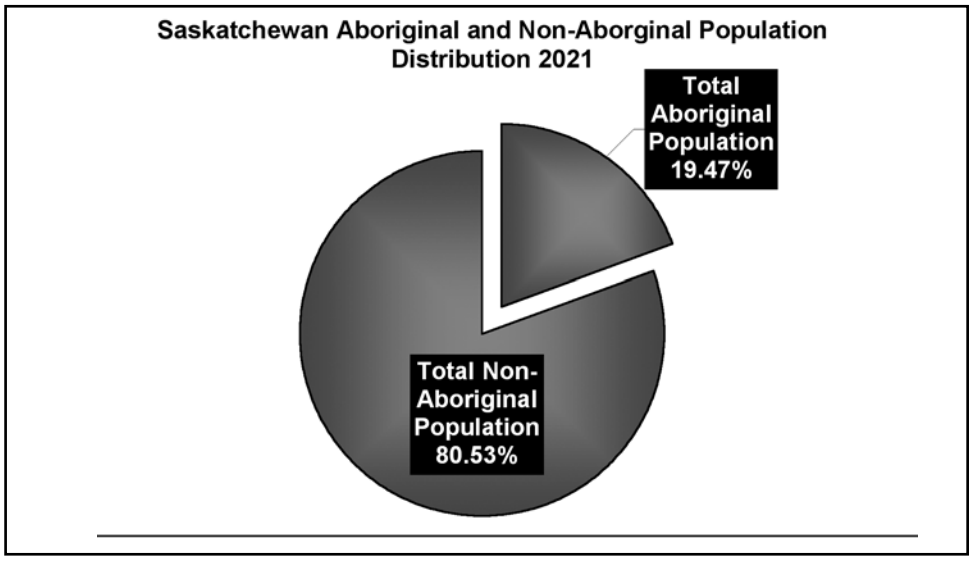


Figure 17

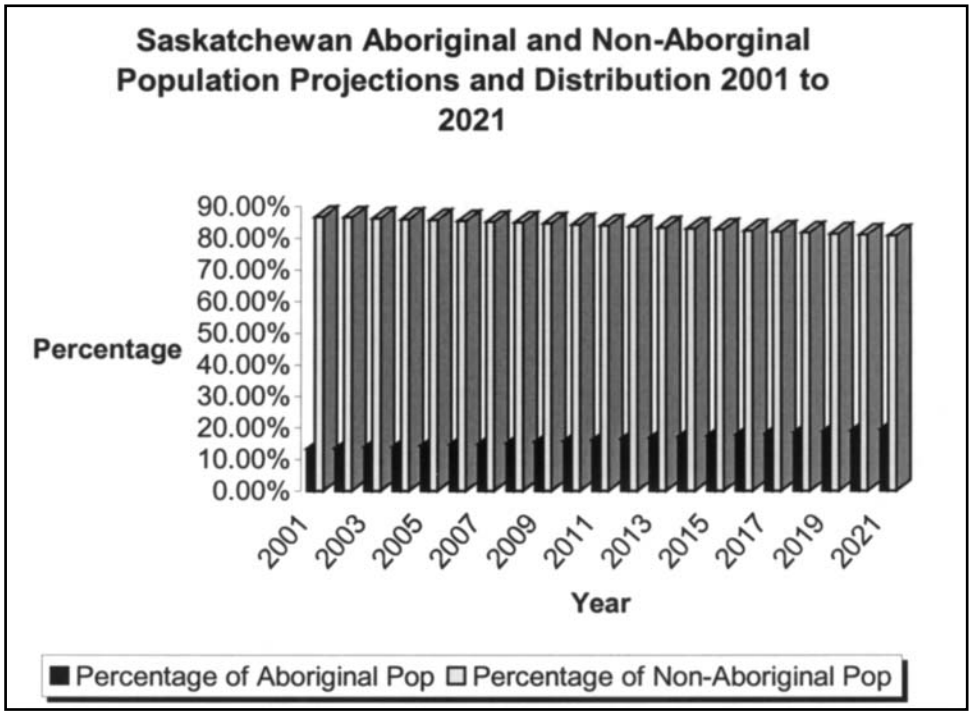


Figure 18

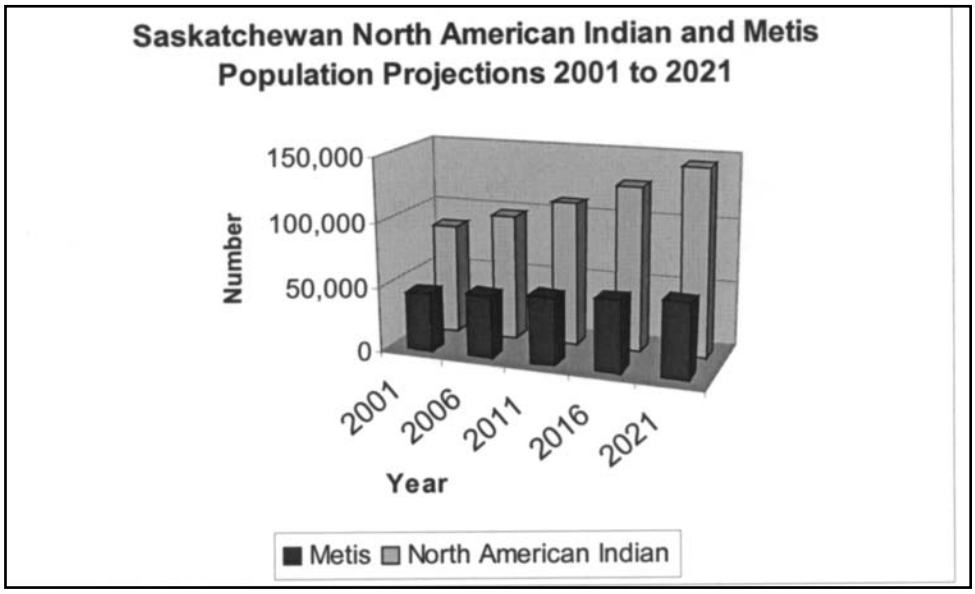


Figure 19

Figure 19 compares the growth rate forecasts of Metis and North American Indian populations in Saskatchewan, 2001 to 2021. The Metis population is smaller and predicted to increase at a slower rate than the North American Indian population. In 2001 the Metis and Native North American populations totalled 44,640 and 85,555 respectively. These numbers are forecast to grow in 2021 to 57,719 (Metis) and 143,880 (North American Indian). Figure 20 profiles the North American Indian, Metis and Total Aboriginal population growth rates. Figure 21 and Table 2 present population projections for Metis and North American Indian population in Saskatchewan, 2001 to 2021. They project that the Metis proportion of the total Aboriginal population in Saskatchewan will decline from 2001 to 2021, due to a natural growth rate that is lower than the Native North American natural growth rate.

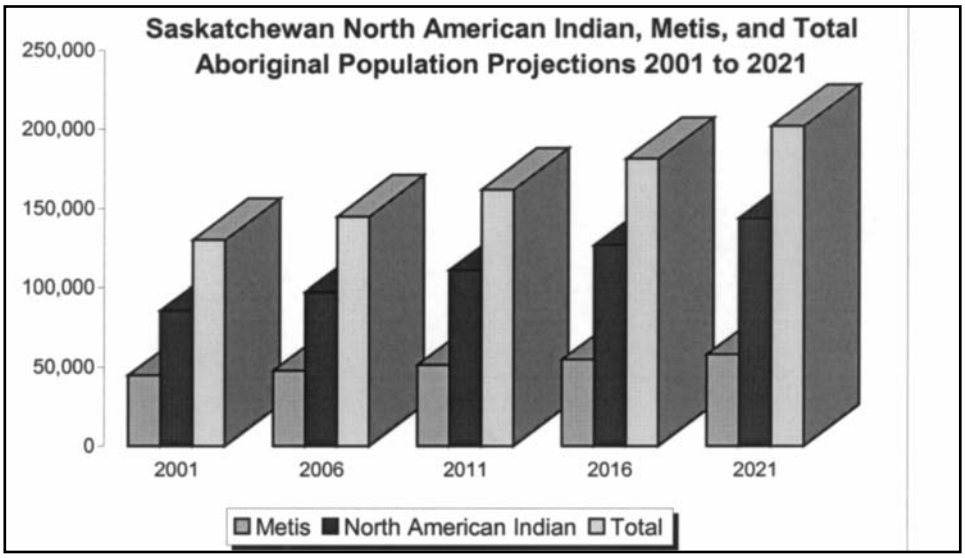


Figure 20

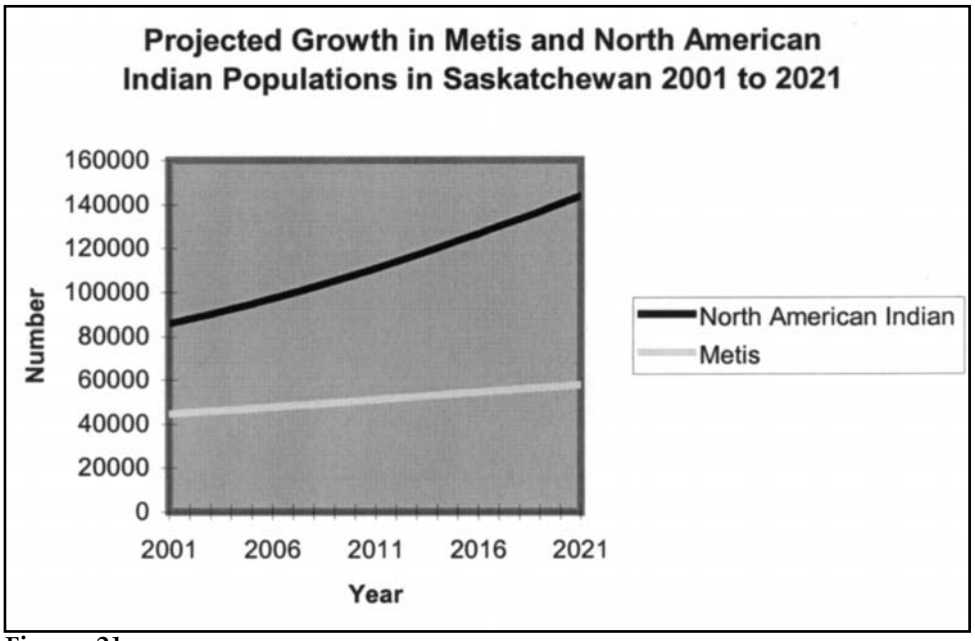


Figure 21

Table 2-Saskatchewan North American Indian and Metis Populations: From 2001 (base year) to 2021

Year	N.A. Indian	Métis	Total Aboriginal Population	% Métis over total Aboriginal	% N.A. Indian over total Aboriginal
2001	85555	44640	130195	34.29%	65.71%
2002	87710	45236	132946	34.03%	65.97%
2003	89947	45837	135784	33.76%	66.24%
2004	92255	46447	138702	33.49%	66.51%
2005	94635	47078	141714	33.22%	66.78%
2006	97106	47724	144830	32.95%	67.05%
2007	99668	48384	148052	32.68%	67.32%
2008	102314	49046	151361	32.40%	67.60%
2009	105047	49714	154761	32.12%	67.88%
2010	107876	50394	158270	31.84%	68.16%
2011	110787	51080	161868	31.56%	68.44%
2012	113781	51780	165560	31.28%	68.72%
2013	116858	52478	169336	30.99%	69.01%
2014	120020	53167	173186	30.70%	69.30%
2015	123267	53856	177122	30.41%	69.59%
2016	126558	54538	181096	30.12%	69.88%
2017	129915	55201	185116	29.82%	70.18%
2018	133322	55851	189173	29.52%	70.48%
2019	136780	56491	193271	29.23%	70.77%
2020	140305	57112	197417	28.93%	71.07%
2021	143880	57719	201600	28.63%	71.37%

The following three figures complete this section of the report by including population pyramids that represent Aboriginal and non-Aboriginal populations of Saskatchewan in varying ways and over time. Figure 22 compares the proportional representation of both the Aboriginal and non-Aboriginal as they were in 2001. Figures 23 and 24 compare the Aboriginal population of 2001 to the projected Aboriginal population of 2021 in proportional and real terms. It is important to note the movement of the Aboriginal baby boom from a very young cohort in 2001 to a more mature cohort in 2021. The male portion of the population is represented on the left-hand side while the female portion is represented on the right-hand side of the following population pyramids.

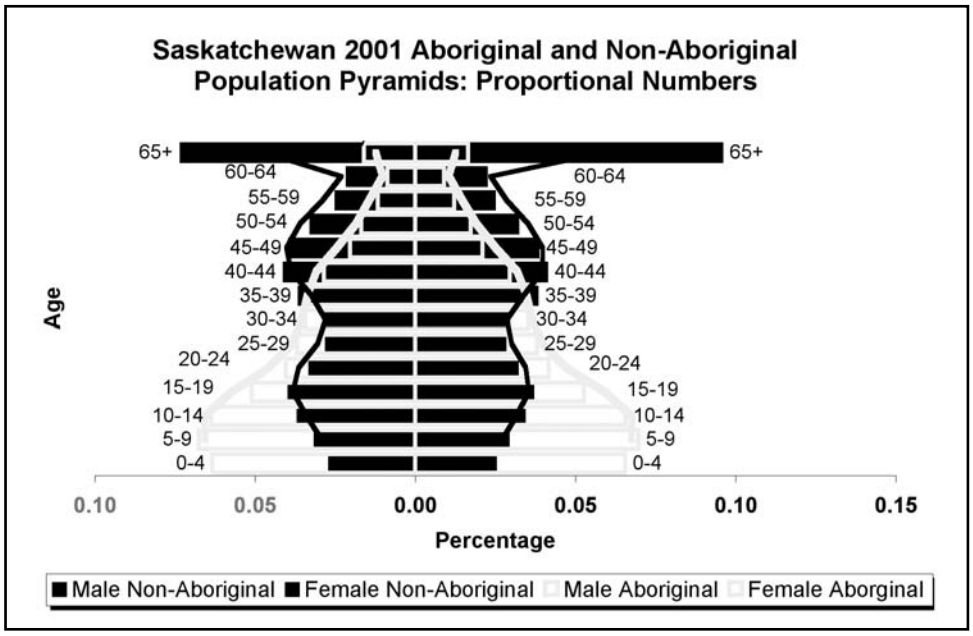


Figure 22

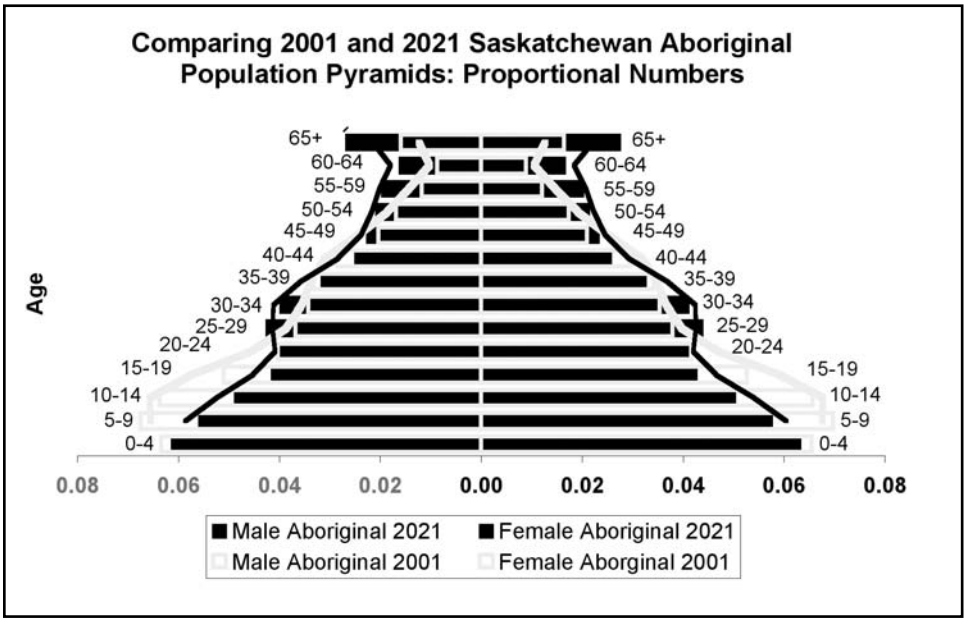


Figure 23

Figure 24

In this demographic and statistical presentation of Aboriginal and non-Aboriginal peoples, the data portrays the Aboriginal peoples of Canada as a young and growing sector of the overall Canadian population. In Saskatchewan, Aboriginal peoples (primarily Metis and First Nations) are an even younger and also growing sector of the provincial population. Because of the population makeup of the province, the growth in the Aboriginal population will have a qualitatively significant effect on the population profile. Over the next twenty years, almost 20 per cent of the provincial population will be Metis and First Nation. In particular, the Aboriginal proportion of the population of the cities in the province will continue to grow, though not to the extent of some alarmist prognostications that stress ''mass exoduses'' from reserves to urban centres. The average age of Aboriginal peoples in the province will increase slightly, but the provincial Aboriginal population as a whole will remain a young population. This age characteristic will change, but not for 20 to 40 years, when the Aboriginal baby boom moves from a cohort of children, teenagers, and young adults, to a cohort of experienced and increasingly well-educated young adults 20 to 35 years of age prepared for leadership and other roles in the provincial economy.

Demographic analyses and projections illustrate in general terms the profile of Aboriginal communities and populations in Canada and Saskatchewan. Out of context, the numbers do not necessarily illustrate their lived reality or the nature of the systemic barriers that First Nations and Metis people in Canada face, the force of the legal definition of identity, implications of the reinstatement of status via Bill C-31 and of self-reporting, and the power of statistical tracking. Demographic representation remains determined and constrained by the forms of data collection, obscuring the rich resources, the capacities, successes, and achievements of Aboriginal adults and youth. Those that develop policy for justice, health, education, and other areas must understand the limitations of current reporting on Aboriginal conditions and challenges, using both the qualitative measures and discussion and the demographic profiles and projections in this section. Policy makers must draw on the range of available measures and work to expand capacities to evaluate effectively, and include multiple categories of identity wherever possible (age, gender, abilities, education, etc.) so as to better understand key indicators and direct us to areas for and means of change. Aboriginal peoples are much more than their problems, issues, and statistics.

5.0 Justice System Participation and Costs

5.1 General Trends and Issues

If the law has never been as neutral as its founding myths would suggest, it is a powerful measure of the norms and values of the wider culture that it shapes and is shaped by. Indeed the common sense of the reasonable person has long been the yardstick of humane and just decision-making. Yet neither the law nor the cultural context is ever as singular, stable, or self-evident as such self-images suggest—and hence the conflict over the role and ramifications of criminal law, debates about rights and remediation, rehabilitation, retribution, or restoration, deterrence or domination. The law is always making choices, not least in how it construes criminality, what is deemed legitimate and what illegitimate behaviour, and the choices change over time and with significant consequences for groups marginalized by race, ethnicity, gender, class, age, abilities, and sexuality.

The complex intersection of law and culture continues to shape what crimes are reported and why some are reported and some not. In interpreting participation rates, it is important to stress that crime rates do not include all crimes, but reflect complaints of criminal conduct that are substantiated by police investigation. In addition to systemic factors related to labelling, profiling, and harassing of "targeted" groups, it is also the case that different jurisdictions have different reporting methods that make it necessary to read the "evidence" with some caution. For example, some jurisdictions base identification on nothing more scientific than police perception of offender ethnicity.

Further, surveys suggest only 50 per cent of crime is reported (62 per cent of break and enters, 60 per cent of motor vehicle/parts theft, 46 per cent of robberies, and 37 per cent of assaults); 78 per cent of sexual assaults and 67 per cent of household thefts go unreported; assaults are far more likely to be reported than fraud. And history and geography significantly impact on participation rates of Northern Aboriginal peoples (Saskatchewan Justice, 2003).

In part because of an aging population and decreasing numbers in the 15-24 age group responsible for 45 per cent of property crime and 31 per cent of violent crime, national crime statistics show a steady decline since 1990, excepting a 1 per cent increase in 2000-2001. Just as a non-Aboriginal baby boom post World War Two reached 18-29 years of age and became increasingly urbanized in the 1960s to 1980s, so crime rates experienced sharp increases. That pattern is repeated in the Aboriginal baby boom and urbanization of recent years (Boe, 2002).

Though the national crime rate has been steadily decreasing by about three per cent per year since 1990, with an exceptional rise of one per cent, 2000-2001 (Taylor-Butts, 2002), it is important to recall that the annual reporting of crime statistics, no matter how good the news, has a hard time competing with the daily reports of individual crime impacting on local communities—and especially when "contextual information" is rarely part of the "media lens," when pressure on reporters to meet deadlines exacerbates the situation, and when reassuring

comment on low violent crime rates is unlikely to be read sympathetically by those experiencing loss (Roberts, 2001).

5.1.1 Justice Spending in Canada: Participation Rates and Costs

In the Canadian Centre for Justice Statistics (CCJS) Juristat on *Justice Spending in Canada, 2000/01*, Taylor-Butts (2002) provides an overview of "some of the government expenditures associated with operating five major sectors of the Canadian justice system: policing, courts, legal aid, criminal prosecutions and adult corrections." The Juristat not only reports trends in per capita spending on justice services in Canada (1990/91 to 2000/01), but also highlights spending on justice services in the provinces and territories (over time and by sector) and provides counts of people employed by the justice system (over time, by sector and province/territory). This report provides a general starting point for the analysis of the proportion of participation rates and costs associated with Saskatchewan Aboriginal participation in 2000/01, lending to projection rates for 2002 to 2021 highlighted in Section 5.7. The following overview clarifies how the Canadian Centre for Justice Statistics (CCJS) describes justice spending in Canada.

About Justice Spending

The Canadian Centre for Justice Statistics collects resource and expenditure data for five justice sectors: policing, courts, legal aid, criminal prosecutions and adult corrections. In the case of youth corrections, national estimates on spending are available from Justice Canada up to 1998/99.

Police expenditures **include actual operating expenditures that are paid from police force budgets, such as salaries and wages. Revenues, recoveries and capital expenditures are excluded. All police agencies are covered, with the exception of specialized enforcement areas such as the Canadian Security Intelligence Service. Personnel involved in the enforcement of specific statutes in the areas of income tax, customs and excise, immigration, fisheries and wildlife are also excluded.**

Court expenditures **include all operating expenditures (salaries and benefits) for judges and support staff in the Supreme Court, the Tax Court, the Federal Court of Canada, the Office of the Commissioner for Federal Judicial Affairs, the Judicial Council and all courts in the provinces and territories. Excluded are maintenance enforcement services, building occupancy costs, prisoner escort services, and costs associated with coroner inquests.**

Legal aid plan expenditures **include payments made to private law firms and legal aid plan staff for the provision of**

legal advice and representation in criminal and civil matters. Law office and community law clinic expenses (staff salaries, benefits and overhead) are included, as are all central administrative expenses. These expenditures represent spending by legal aid plans only. It should be noted that this spending may not equal government contributions to legal aid plans in a given year.

Criminal prosecution **expenditures include all operating expenditures (salaries and benefits) for full-time and contract lawyers, who conduct the prosecution of criminal cases on behalf of the Crown. All direct support staff costs are also included.**

Adult correctional expenditures **include operating expenditures for federal and provincial correctional facilities (salaries and benefits for custodial and non-custodial staff), community supervision (probation, parole, bail supervision), headquarters, and parole boards (federal and provincial).**

Youth correctional expenditures **are estimates provided by Justice Canada and are likely an underestimate of the total costs of youth correctional expenditures. The figures include youth alternative measures, custodial services, probation supervision, judicial interim release supervision, medical and psychological reports, post adjudication detention, pre-disposition reports, review boards and screening services. Excluded are those costs related to pre-trial detention (remand and lock-ups) and the adjudication of young offenders for provincial offences.**

Source: Taylor-Butts, A. (2002). *Justice Spending in Canada, 2000/01*. Canadian Centre for Justice Statistics. Ottawa: Minister of Industry.

Taylor-Butts (2002) shows that, for the past 20 years, justice costs have accounted for about 3 per cent of total government expenditures: significantly less than government expenditures on social services, health care, education, and debt charges (see the following figure).

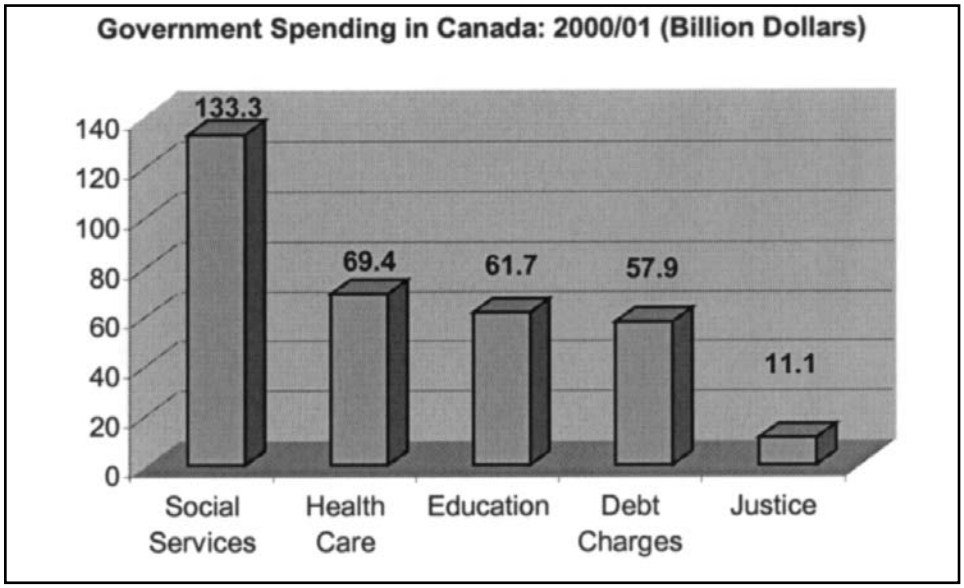


Figure 25-Source: Taylor-Butts, A. (2002). *Justice Spending in Canada, 2000/01*. Canadian Centre for Justice Statistics. Ottawa: Minister of Industry.

According to Taylor-Butts (2002), Canadian governments spent a total of approximately $11.14 billion on the five sectors of justice in 2000/01: Police ($6.801 billion or $221 per capita), Courts ($1.039 billion or $34 per capita), Legal Aid Plans ($512 million or $17 per capita), Adult Corrections ($2.454 billion or $80 per capita), and Prosecutions ($335 million or $11 per capita). The distribution of these costs over the five sectors is presented in the following figure. It is important to note that Youth Corrections are not available beyond 1998/99.

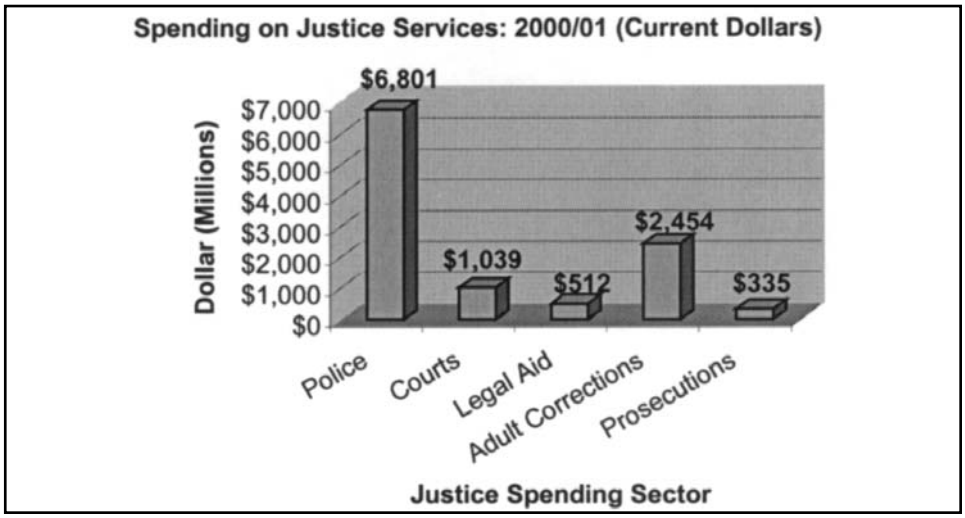


Figure 26-Source: Taylor-Butts, A. (2002). *Justice Spending in Canada, 2000/01*. Canadian Centre for Justice Statistics. Ottawa: Minister of Industry.

Approximately 126,924 people are employed by the justice system in Canada (2000/01). See the following figure.

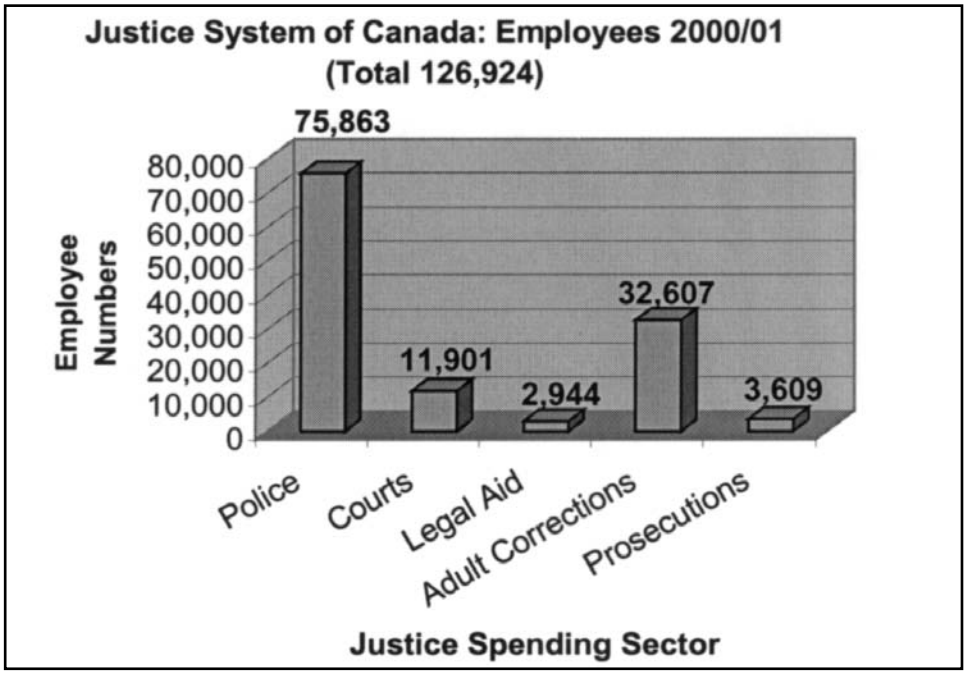


Figure 27-Source: Taylor-Butts, A. (2002). *Justice Spending in Canada, 2000/01*. Canadian Centre for Justice Statistics. Ottawa: Minister of Industry.

The Canadian Centre for Justice Statistics is the administrative arm of the national Justice Statistics Initiative, and a division of Statistics Canada.

The Canadian Centre for Justice Statistics

In 1981, the chief Statistician and the Federal and Provincial Deputy Ministers with responsibility for justice in Canada began the National Justice Statistics Initiative in response to the long time absence of a comprehensive system of comparable national justice statistics. The purpose of the Initiative is to collect and disseminate justice statistics and information to support the administration of justice in Canada, and to ensure that accurate information regarding the nature and extent of crime and the administration of civil and criminal justice is available to the Canadian public. The Canadian Centre for Justice Statistics (CCJS) is the administrative arm of the Initiative and a division of Statistics Canada. With guidance from its provincial/federal committees, the CCJS develops and implements statistical surveys, and provides information, products and services to both the partners in the Initiative and the public.

Source: Statistics Canada (1997). Graphical overview of crime and the administration of criminal justice in Canada.

5.1.2 First Nations and Metis Peoples

> **Canada must take the measures needed to significantly reduce the percentage of Aboriginal people entering the criminal justice system, so that within a generation it is no higher than the Canadian average.** (Canadian Government, 2001)

Even if cultural, spiritual, and political activities of Aboriginal peoples are no longer criminalized and they may now hire lawyers to argue cases against the Crown, a legacy of distrust and alienation continues to shape participation in the criminal justice system. In the post-World War Two period, Aboriginal participation in the justice system increased dramatically because of new demographics, new technology, and new justice system practices adding to rising expectations of Aboriginal veterans returning from the war. If high post-war birth numbers and increasing numbers entering teenage and young adult years (18-29) associated with risk were significant (Boe, 2002), other factors contributing to higher Aboriginal participation included: new energetic policing practices and agreements with the Royal Canadian Mounted Police to enforce Canadian law consistently where Aboriginal law had previously prevailed, as well as increased mobility with new highways and transportation, greater access to alcohol, and close oversight of social and family legislation (Hamilton and Sinclair, 1991).

Unusual surveillance, targeting of marginalized groups, selective policing, as well as prosecutorial discretion and "mutual distrust between police and Aboriginal people" added to the so-called "crime wave" (Quigley, 1994). And the result is that "generations of young people have a much greater chance of being jailed than of completing their education or of obtaining meaningful employment. The socioeconomic effects of that loss of productivity are profound" (Quigley, 1994). And the impacts go well beyond individuals, families, and communities.

Above all, the system requires public confidence and trust among all citizens. But a unique set of historical circumstances (including colonization and racism) combine with current socio-economic disadvantage to influence patterns of offending: Saskatoon and Regina, for instance, number among cities with the highest disparities between Aboriginal peoples and the general population (Saskatchewan Justice, 2003). And crime rates are conspicuously higher in Saskatoon and Regina than in comparable Prairie cities. When Saskatoon, for instance, increased its proportion of the 15-24 age cohort by 11.94 per cent between 1992 and 2002, the crime rate increased by 12.16 per cent (CCJS).

Though a Statistics Canada General Social Survey portrays Saskatchewan as comparable to other provinces in terms of resident safety, the survey obscures differential effects of crime and victimization. While the three territories represent the highest criminal justice participation rates, Saskatchewan is 1.8 times the national average. Though only 10 per cent of the population in Regina and Prince Albert combined, Aboriginal peoples constituted 47 per cent of victims of violent crime. In 2001-2002, 77 per cent of those admitted to

Saskatchewan correctional centres and 55 per cent of those in federal corrections in 2001 were Aboriginal peoples; in other words, 1 in 7 Aboriginal men and 1 in 50 Aboriginal women were under provincial or federal correctional supervision, 2000-2001. In addition, 75 per cent of youth in custody in 2000-2001 were Aboriginal (Saskatchewan Justice, 2003).

If poverty (together with unemployment and under-education) has meant that many First Nations and Metis are considered poor candidates for probation on the basis of "neutral" yet "legally relevant criteria" (Quigley, 1994), others unable to pay fines have ended up in jail before amendments to the Criminal Code in 1996 ensured that very few people in Saskatchewan go to prison for non-payment of fines. Yet others plead guilty to access programming in prisons—or simply to get food and shelter. And Aboriginal peoples have often been "model prisoners" because they have been acculturated to institutional settings. If they often prove "more amenable and less demanding" than the rest of the population, they have ironically good reason:

> **For many Indians the food, lodging and facilities are superior to what they can hope to find on the outside and, even more significantly, for some Indians prison represents their only experience in social equality with non-Indians.** (Canadian Corrections, 1967)

The result is that there is less incentive for some "to avoid an early return to the security of a superior material existence within the walls." For others the conditions of parole set standards "designed for urban dwellers in a wage-employment economy" that are hence beyond the reach of those who have little expectation of devising plans including secure employment far less residence in areas accessible to the required supervision (Canadian Corrections, 1967). And the fact that those who speak only an Aboriginal language are excluded from jury duty (like all who do not speak the trial language of English or French) adds to inequities and Elders are not always given the respect accorded priests and ministers or other professionals (CCJA, 2000).

If mainstream legal conditions betray cultural biases in these particulars, they also do so in the comprehensive tendency of the administration of justice to specialization—to fragmentation of practices. Little Bear (1994) gives the example of the sixty-year-old Aboriginal woman with a drinking problem thrown in RCMP cells no fewer than 897 times. When the police, judge, and prosecutors were asked why, the answer was:

> **"We only pick people up. We're not social workers, you know." The judge said, "All I determine is guilt. I don't care about whatever else happens." The prosecutor said, "I don't know what the police do, but I only deal with the files that are given to me on court day."**

The problem remains that there was "no cross-boundary communication" and victims are abstracted from their broader social and other circumstances—

circumstances beyond the experience or understanding of most of the legal profession (Jackson, 1988a). Ed Campbell of The Pas likewise argued, "There's no understanding of that [values and circumstances] in a lot of the communities by the enforcers, by the law, by the judges that make sentences. The only thing they know is that the person is coming up on the docket and he has to be charged according to the letters or the figures or statistics, whatever they have. That's the only understanding they have" (qtd. in Hamilton and Sinclair, 1999). In the case of Yvonne Johnson at trial in the Wetaskiwin Court of Queen's Bench, 1991, the crown prosecutor's words to a jury of her "peers" (drawn from the conservative white community of the Alberta Bible belt) speak to the depth of the incomprehension:

> *These* **people . . . are very different from you and me.** (Wiebe & Johnson, 1998)

And defence counsel Brian Beresh ensured that ("like her ancestor Big Bear at his trial for treason-felony"), "she did not speak a word in her own defence." If Beresh was concerned about possible conflicts with the evidence of her co-accused, he also concluded she should not go on the stand because of her appearance: "Yvonne does not present well; [she] does not look too good" (Wiebe & Johnson, 1998).

If poverty brings Aboriginal people into the system, poverty also makes access to justice problematic, especially when witnesses or the accused may be "left to find their way as far as 110 kilometres, where there is no public transportation and few have vehicles or the resources to take taxis" (Saskatchewan Indian Justice Review Committee 41). Or when they receive only the briefest of interviews with legal counsel in the most deplorable of conditions (including washrooms).

Such evidence is also given by a God's River band councillor and volunteer probation officer addressing the Manitoba Justice Inquiry:

> **A round trip [by air to the circuit court 32 kilometres away at God's River Narrows] costs $240. If a person knows they are innocent and can prove it by having a witness present it means they have to pay for the witness to go to the Narrows to testify. If the witness is employed it sometimes means they have to pay for lost wages too. So it is often easier to just plead guilty and pay a fine if the charge isn't too serious. . . .**
>
> **More often than not our people travel to the Narrows, wait all day and then are told their case is remanded. This means they have to go home, wait until the appointed time and try to save enough money to go back again. And when we go back we stand a good chance of being remanded again. This can happen many times to the same person.** (Hamilton & Sinclair, 1991)

5.1.3 First Nations and Metis Women

> **Women have been a footnote in that male-defined [Canadian prison] system. And if women are the footnote, then Aboriginal women are the footnote to the footnote.** (Monture, 2003)

> **One area in which women have equality in Canada—without trying—is in the national system of punishment. The nominal equality translates itself into injustice. But, lest the injustice fail to be absolute, the equality ends and reverts to outright discrimination when it comes to providing constructive positives—recreation, programmes, basic facilities and space—for women.** (Parliamentary Subcommittee Report to Parliament; qtd. in Jackson [1988a])

If First Nations and Metis women have experienced multiple forms of marginalization and discrimination (on the basis of their gender, ethnicity, age, and class) in the wider mainstream society, the law has played a major role. One of the "gifts" of colonial history, patriarchy brought new cultural values and standards and entrenched them in the Indian Act—with profoundly destructive consequences for the stereotyping and segregation of previously powerful and venerated Aboriginal women. Their symbolic representation has sustained decades of "physical, psychological and sexual abuse": "The portrayal of the squaw," wrote Emma LaRocque, "is one of the most degraded, most despised and most dehumanized anywhere in the world" (qtd. in Hamilton and Sinclair, 1991, 479). And First Nations and Metis women have suffered disproportionately when racism became internalized within Aboriginal communities as sexism (Maracle, 1994). The violent legacy is brutally clear to inmates in Kingston Prison for Women:

> **The critical difference is racism. We are born to it and spend our lives facing it. Racism lies at the root of our life experiences. The effect is violence, violence against us, and in turn our own violence.** (Sugar & Fox, 1990; qtd. in Hamilton & Sinclair, 1991)

According to the Canadian Association of Elizabeth Fry Societies (1998-1999), Yvonne Johnson's *Stolen Life: The Journey of a Cree Woman* (co-authored with Rudy Wiebe) is a book that should be required reading for "all who choose to work in and around our criminal (in)justice system" because it causes readers to "confront the ripped and raw results of colonization, racism, misogyny, classism and poverty on a proud and courageous woman. It also spurs to action and inspires a righteous rage that will help to fuel us in the future." Only with such supplementary reading—with such qualitative measures, First Nations and Metis perspectives on meaning and value, and the costs and benefits of alternatives—will the monetary costs become meaningful.

Such cycles of violence remain beyond the understanding or experience of many who administer the justice system—whether officers attending rape victims or judges sentencing offenders—and the result is clear in cases such as that of Jamie Tanis Gladue, a nineteen-year-old Aboriginal woman sentenced to three years' imprisonment for manslaughter in the killing of her twenty-year-old common law husband (*R. v. Gladue* [1999]). Despite the court's best efforts to give the mandated "fair, large and liberal construction and interpretation" of section 718.2 (e) of the Criminal Code, the court's determined impartiality ironically blinds it to persistent biases that read to confirm and not complicate or rethink beliefs about Aboriginal difference, relevant "circumstances" and "Aboriginal heritage". In its thinking, the court remains overly positivist in its understanding of the meaning of a life, identity, intentions, and circumstances to account for what Macklem (2001) calls the "social facts" of "The Indigenous Difference": "Aboriginal cultural difference, Aboriginal prior occupancy, Aboriginal prior sovereignty, and Aboriginal participation in a treaty process." The court presumes to know an overly singular "Aboriginal perspective" and an "Aboriginal heritage" associated with a "network of support and interaction" and dissociated from a history of colonial violence.

Gladue's life is abstracted and reduced to social symptoms (poverty, abuse, educational and economic disadvantage) severed from their historical sources just as individual experience is isolated from collective, private from public, present from past circumstances. Domestic abuse is thus understood as distinct from the violent abuse and brutal realities of government-sponsored and church-run residential schools or their violent legacies within Aboriginal communities. Such cultural misrepresentation produces all too directly a weak form of mitigation, based on misunderstood causalities and connections—and the tragic over-representation of Aboriginal peoples in the prison population (Findlay, 2001).

And the Elizabeth Fry Societies Annual Report 1998-1999 expressed particular frustration with a persistent tendency to "infantilise or scapegoat" and criminalize women and the related problem of classifying mental health disabilities as a security risk: "equating mental health disabilities with risks only serves to perpetuate a social construction of persons with mental disabilities as dangerous. This is precisely the kind of stereotyping which is prohibited by the equality provisions of the Charter."

Without much more comprehensive and concerted attacks on the sources of Aboriginal women's participation in the justice system, there can be no justice for First Nations and Metis women in Canada:

> **No amount of tinkering with prisons can heal the before-prison lives of the Aboriginal women who live or have lived within their walls. Prison cannot remedy the problem of the poverty of reserves. It cannot deal with immediate or historical memories of the genocide that Europeans worked upon our people. It cannot remedy violence, alcohol abuse, sexual assault during childhood, rape and other violence Aboriginal women experience at the hands of men. Prison**

> **cannot heal the past abuse of foster homes, or the indifference and racism of Canada's justice system in its dealings with Aboriginal people.** (Sugar & Fox, 1990)

5.1.4 First Nations and Metis Youth

> **Disenfranchisement • exclusion • oppression • rejection • marginalization • racialization • institutionalization • vulnerability • harassment • threat • trauma • hopelessness • fear**

If these are not the first words that come to mind when the general public thinks about First Nations and Metis youth involved in the criminal justice system, they are words that are much closer to the daily lived experience of such youth and the root causes of their participation in the criminal justice system. In a submission to the Saskatchewan Indian Justice Review Committee, the Saskatchewan Coalition Against Racism was blunt about the Aboriginal youth experience of justice:

> **Perhaps the saddest fact, and the best starting point for a review of Aboriginal justice, is the reality that Aboriginal youth have a better chance of going to jail than they have of completing high school. The fact is that Aboriginal youth are routinely streamed into lives of unemployment, poverty, incarceration, and suicide. . . . All too often crime is used as a mechanism of escape from unbearable living conditions on-reserves or in foster homes.** (Saskatchewan Indian Justice Review Committee, 1992)

In fearful responses based on misinformation and stereotype, however, the general public is much more likely to conjure up images of youthful behaviours deriving from disrespect, irreverence, irresponsibility, even violent confrontation, or focus on the superficial symbols of youthful difference and dissent—the music, clothing, and body adornments widely associated with gang and other activity.

That Aboriginal youth represent 75 per cent of inmates in youth facilities when Aboriginal people represent only 15 per cent of the Saskatchewan population is indeed a damaging set of statistics. Yet fears about youth crime escalating beyond control might be measured against declining figures in most jurisdictions. Or fears about violent crime might be relieved if people understood that more than 50 per cent of those incarcerated are there for property crimes and not acts of violence. Or concerns to increase penalties and get tough on crime might be rethought if measured against Quebec's progressive actions that have reduced youth crime to the lowest rates in Canada. That Saskatchewan's high figures prevail in the context of record-breaking incarceration of young offenders speaks for itself (Green & Healy, 2003).

To focus on symptoms, however, is to reveal nothing of underlying sources of superficial behaviours, of the motivations of youth, of the hidden scars, or risk factors they face (FSIN, 2003). Childhood poverty is but one factor with implications for health, education, and justice participation (Lee, 2000). Involvement in the child welfare system is another indicator, with one study identifying 63 per cent of Aboriginal offenders (36 per cent of non-Aboriginal) who had been adopted or placed in foster or group homes and experienced instability or attachment difficulties (Trevethan, Moore, Auger, MacDonald, & Sinclair, 2002). And a study of childhood aggression showed significant links to exposure to violence in the home: 39 per cent of women reporting assaults by a spouse acknowledged that children were witness to the violence (Hotton, 2003). Yvonne Johnson's poetry (Wiebe & Johnson, 1998) speaks powerfully to the destructive legacy of abuse, to those invisible scars:

There's a hole left in my soul
Where I fear to go.
There, once, a child should have lived.

Instead anger and hatred moved in.
They smothered the child
With filth and guilt.

To focus on symptoms without hearkening to the sources is to continue the pattern of enforcement, punishment, and incarceration that alienates and separates youth from supportive environments that might heal, support, respect, and re-connect. When Northerners are incarcerated in the south, for instance, for minor (and often alcohol- or drug-related) crimes, they are not only divided from supports but exposed to new forms of violence. Of one youth returned from jail, a speaker at Meadow Lake commented, "I could just see the fear in his eye. . . . and he said, that's hell over there. He said there's gangs in that jail, I've seen two stabbings, people getting beat up" (Commission, 2003c).

To ignore environmental and other risks is to produce and reproduce gang activities. Delinquency in 12-15 year olds is associated with low commitment to schooling and experience of victimization, though gender differences in patterns of reporting suggest differential intervention strategies (Fitzgerald, 2003). Risk factors are to be found not **in** the youth but **in**

- history of colonization.
- the experience of institutionalization, isolation, and socio-economic deprivation.
- disenfranchisement and marginalization.
- inadequate training and education as well as insufficient opportunity.
- heightened media focus.

- labeling and surveillance, police intervention.

- custodial conditions where coercion and intimidation add to gang numbers.

These factors make gangs attractive to youth searching for community, according to Ms. KukdookaTerri Brown, President, Native Women's Association of Canada, addressing the Standing Senate Committee on Aboriginal Peoples:

> **With the lack of social cohesion based on common family, community and shared values, many youth develop their own sense of self through the formation of gangs. Aboriginal youth are looking for someone to connect with and a gang of Aboriginal youth provides a safe place. . . . A sense of exclusion based on race and income are common factors that lead to the sustenance of gang culture and activity.** (Chalifoux & Johnson, 2003)

And without safe alternatives, employment, education, treatment centres or programming (like the federal National Native Alcohol and Drug Abuse Program for First Nations and Inuit) and often facing violent retribution, the youth remain captive to gang culture (Chalifoux & Johnson, 2003). Even in its punning title, the FSIN (2003) initiative Alter-Natives to Non-Violence is sensitive to these issues, being careful neither to promote nor to provoke gang activity in its self-identification. And the initiative to divert from gangs and dispel their glamour and mystique is building on the Treaty mandate to foster economic, educational, and social activity and promote public education.

The federal Aboriginal Gang Initiative, funded by the Aboriginal Issues Branch, Correctional Service of Canada, is careful to define what it does and does not do in helping youth make positive change to walk the "Red Road" towards "Mending the Sacred Hoop" of Life. It is clear that it neither displaces nor duplicates other services nor produces dependency. And it wisely acts on the presumption that we share responsibility because "We are all relatives."

> **Far too often the lives of these young people become just another negative statistic. We must resist the temptation to read these figures idly and search ourselves for a deeper understanding of the real suffering and pain that exists behind these numbers. These youth may well be our doctors, poets, artists, leaders, and educators. . . . Minus their potential, we are diminished.** (Chalifoux & Johnson, 2003)

To turn unproductive thinking around, it is important to remember, as Green and Healy (2003) argue, that when the system is being "tough on crime," it is being "Tough on Kids." If faces are attached to the figures that proliferate in reports, then the statistics might become vivid reminders of **who** has suffered in the name

of justice. Such reminders might clarify what it feels like to be stereotyped, targeted, marginalized, suspected, or harassed. Then people might understand the power of labelling to produce behaviours in youth—labelling that is typically seen as the "neutral" naming of that which pre-exists and takes its source within the subject of the behaviour. By contrast, social scientists are now clarifying the responsibility of those who label:

> **One of the forces that pushed a group from the experimental to the criminal stage was the labelling of the group as criminal by the community at large. Similarly, labelling a child delinquent was thought to increase the likelihood that the child would come to see himself as such, affiliate with other children who had the same label, and display further and increasingly problematic antisocial behaviours. . . . Lemert was particularly concerned with the way that the juvenile court itself created and solidified the definition of the delinquent. Lemert hypothesized that having a juvenile court record and spending time in jail with others who had court records stigmatized the child.**
>
> **Such stigma, represented in modern society as a "record," gets translated into effective handicaps by heightened police surveillance, neighbourhood isolation, lowered receptivity and tolerance by school officials and rejections of youth by prospective employers.** (Hylton; qtd. in FSIN, 1996)

Instead of blaming the victims or denying systemic barriers (for some) and privileges (for others), people might recognize the emotional, physical, spiritual, and mental consequences of institutional barriers and systemic injustice, and "the frustration of not being listened to" (Commission 2003c). Then people might understand the claim of one defendant who lost his parents at a young age, was moved from foster home to foster home, where he experienced physical and sexual abuse, and ended up in closed custody at Kilburn Hall—an experience he described in these telling terms: "I liked Kilburn, it was like a home" (cited in Justice Bayda's dissent, *R. v. Morin* [1995]).

We need to recall challenges Aboriginal youth face in adapting to mainstream culture, while attempting to maintain their traditional culture. They are further challenged in a justice system where unequal treatment persists:

- Aboriginal youth represented 15 per cent of cases in alternative measures in reporting provinces and territories, 1998-99. (CCJS, 2001a)
- Aboriginal youth accounted for 48 per cent of alternative measures cases in Saskatchewaan, 1998-99. (CCJS, 2001a)
- Aboriginal youth are more likely to be remanded in custody (26 per cent of total, but 7 per cent of youth in reporting jurisdictions). (CCJS, 2001a)

In their report on *Urban Aboriginal Youth: An Action Plan for Change* on behalf of the Standing Senate Committee on Aboriginal Peoples, Chalifoux & Johnson (2003) aim to reframe current debate, renew relations between government and First Nations and Metis peoples, and promote proactive and preventative measures. The report refuses to be confined by "problems" that reinforce negative stereotypes and inflict real harm on self-image and success, but focus attention on the human potential, contributions, and "unshakeable resilience" of Aboriginal youth:

> **Far too often the lives of these young people become just another negative statistic. We must resist the temptation to read these figures idly and search ourselves for a deeper understanding of the real suffering and pain that exists behind these numbers. These youth may well be our doctors, poets, artists, leaders, and educators. . . . Minus their potential, we are diminished.**

Designed to nurture and support aspirations and capacities of youth by challenging current limitations on federal responsibility to First Nations off-reserve and other status-based constraints impacting on Metis and non-status Indians, the report breaks with the past "crisis intervention model" and survival mode and promotes Aboriginal youth involvement in decision-making. In its comprehensive recommendations, it promotes enhanced support for Post-Secondary Student Support Program (PSSSP), an audit of successful youth programs and practices, long-term commitment to Urban Aboriginal Multipurpose Aboriginal Youth Centre (UMAYC), an Urban Aboriginal Youth Sport and Recreation Initiative, promotion of Aboriginal culture and history in mainstream educational institutions, Fetal Alcohol Spectrum Disorders (FASD), sexual health, alcohol and drug abuse, and parenting programs, and labour market training.

And the children involved in the Provincial Youth Delegation, an initiative of the Children's Advocate Office, demanded voice and responsibility. The Delegation has been replaced by two youth coordinators who will facilitate future consultations through youth focus groups examining rights education and issues that are important to youth who are eminently able and committed to "breaking new ground." The children want a say in governance (on the boards and on student advisory bodies) and are eager to share responsibilities for the reconstruction of a quality, accessible, relevant, respectful, supportive education system. In particular, they recommend workplace and problem resolution training, addictions and other counselling services, multicultural and anti-racist programs, Native Studies in the elementary curriculum, and recreational opportunities for all, not only for those that "make the cut."

In a youthful Aboriginal population and aging and decreasing non-Aboriginal population, Boe (2002) sees not challenges but "exceptional opportunities to integrate Aboriginal youth into the labour force" and "help to moderate the high rates of crime and incarceration amongst Aboriginal youth," especially if they increase education and job skills training and if employers are motivated by and

take advantage of Employment Equity legislation. The Peacekeepers program in Saskatoon, an important initiative of the Saskatoon City Police Service and the Saskatoon Tribal Council, is one program designed to get beyond labelling "at-risk" youth to nourish potential while making a difference in the lives of individuals and institutions.

5.2 Policing

> **There remains a strategic reason for putting extra attention on overcoming racism within Canadian policing. As the front-end of the criminal justice system, discriminatory discretion in policing shapes everything that follows. If any significant change is to be made in the steady trend to overincarcerate Aboriginal people, something must change in policing itself.** (Harding, 1991; qtd. in McNamara [1992])

To address the needs and concerns of First Nations and Metis peoples, policing reform from the late 1960s and 1970s focused on cross-cultural training, legal education for Aboriginal people and Aboriginal court worker programs, tribal policing and special constable programs. However, such initiatives had less impact than anticipated largely because they failed to address adequately structures of power and privilege that drive discriminatory practices. Indeed, commitment to cross-cultural training was frequently resourced (in time, personnel, and finances) at levels that left the training in danger of entrenching the very ethnocentrism it was designed to counter (Cross-cultural Consulting, 1990). In the case of the special constable program ended in 1990, capacity remained insufficient, roles were never adequately defined, dissatisfaction led to high turnover rates, and positions remained subordinate and largely outside decision-making domains (McNamara, 1992).

The Aboriginal Justice Inquiry of Manitoba has been among strong voices for Aboriginal police forces and community policing as a way of retrieving a model of policing supportive of the communities laws and customs. Designed to redress corruption and inefficiencies plaguing many police forces, community policing aimed to decentralize and reconnect with communities, replace reaction, enforcement, and statistical "success" rates with pro-active prevention and partnerships, and mobilize community resources (Hamilton and Sinclair, 1991).

A Chicago study has showed that community policing, police partnering with the community to problem solve and share responsibility for community peace and safety, has a 45 per cent success rate in reducing crime and a 50 per cent success rate in reducing drug and gang activity. And communities rate police responsiveness highly, the public's fear of crime decreasing by as much as 50 per cent (SJSCPS, 2003).

And community policing has been at the heart of debates in Saskatchewan and proved especially divisive in Saskatoon during 2003 municipal elections. Debates have been sustained by the ongoing Commission of Inquiry into Matters Relating to the Death of Neil Stonechild (under the Honourable Mr. Justice D. H.

Wright)—its ongoing litany of disturbing failures of communication, incompetence, indifference, and neglect—and by the civil suit (brought by Richard Klassen and eleven plaintiffs) in which a police officer (as well as crown prosecutor and child therapist) were found responsible for malicious prosecution.

In the face of such documented abuses by police personnel responsible for enforcement and punishment, recent debate in Saskatoon has continued to focus on a need for more police personnel with little regard to questions about conduct, responsibilities, and the efficacy of simply adding to numbers. Meanwhile, resistance to community policing persists despite the proven success and cost-effectiveness of local projects involving community ownership of problems.

One example of a cost-effective community policing intervention in Saskatoon aimed to reduce crime in McNab Park by translating community support into meaningful activity for children in an area where crime was rampant, poverty was widespread, and nobody seemed to care. If people did care, they had no resources to combat crime. In an area with no community facilities (school or recreational centre) but empty rental space aplenty, the facilitation of the Saskatoon Police Service and money from the Travelodge Hotel, SGI Canada, Cogema Resources, Bazaar Novelty, and input from the Saskatoon Rotary Club North, the city's leisure services department, Forest Grove Community Church, and Saskatoon Airport Authority allowed the community to rent half a duplex for a community centre run by a community committee who understood the needs and potential of their community members. With "financial, material and moral" support from the community at large, "what was a next-to-hopeless situation has been turned completely around" (Lockwood, 2003). In the two years of operation of McNab Park Youth Project, there have been these benefits:

- 78 per cent decrease in crime (from 270 offences in 2000-01 to 60 in 2002-03).
- a recreation centre complete with basketball court and hockey rink and a playground.
- cubs, scouts, summer and after-school programming.
- free clothing depot, computer and cooking classes, free kids nights with movies.
- bowling and field trips.

"Community policing is not rocket science," says Constable Larry Lockwood. Nor is it about being "soft on crime." It's about giving people the opportunity to participate, take ownership, and address root causes of crime problems so as to effect positive change. In a place where it would be easy to point fingers and blame the police, the courts, welfare, parents, or the kids, community policing was a "first step" in getting involved. And it all started with frustration leading not to futility and failure but to engagement, imagination, creativity, and action (Lockwood, 2003).

An initiative of the Saskatoon Police Service (SPS) and the Saskatoon Tribal Council, the Peacekeepers Program is another success story, one that grew from a grassroots collaborative approach to at-risk youth. Critical to the development of the program was the community partnership among SPS, Saskatoon Tribal Council, Metis Nation of Saskatchewan, and the Federation of Saskatchewan Indian Nations to create the position of the Aboriginal Liaison Officer (Craig Nyirfa since 1994), and define the officer's roles and responsibilities to cultivate good relations and put Aboriginal culture at the heart of decision-making and activities. Officer Nyirfa and Constable Keith Salzl have been working together on the Peacekeepers program since 2001.

Peacekeepers is a story about people and community partnerships, about building relationships and trust, about preventing and reducing crime, while building capacity by mentoring those who might become police officers. It is about making a difference not only in the lives of individual participants but in the organizations they represent. It is also a model for not only respecting First Nations culture but internalizing it within organizations, putting it to work in policies, processes, and practices so that it changes them at their roots. Peacekeepers is about thinking outside the colonial box! In other words, Peacekeepers goes beyond the label (at-risk) to see the opportunities and human potential—and it nourishes them!

Typical youth participants share some or all of these experiences:

- Truancy from school.
- Involvement in crime.
- Severely dysfunctional homes.
- Family history of crime and abuse.
- Only contact with police in negative situations.
- Disrespect for and fear of police.
- Stereotypes of police as "the enemy."

Building on shared cultural and physical activities, Peacekeepers proves mutually educative for youth and adult participants, those who are First Nations and those who are not. First Nations values and principles are foundational to a program that is not paternalist, but understands all participants can learn from one another. Learning from respected Elders and through sweat lodges, talking circles, and the medicine wheel, youth begin to find balance in their lives as they take pride in their identities and learn the value of First Nations people, traditions, and heritage to the broader community.

Activities challenge the youth, but also give opportunities to excel in areas where they can teach adults a thing or two. While one type of program involves regular activities that are inexpensive and readily organized, the second set of activities

requiring significant planning and resources offers intense pro-active cultural awareness programs designed to benefit youth and police: canoe trips, bike excursions, wilderness hikes, ski trips, winter survival trips, basketball tournaments, firewood trips, rock climbing, and sweat lodge ceremonies.

At all times, they are working together on teams, building leadership skills, and learning to trust and rely on one another. And that involves overcoming the barriers of preconceptions, stereotypes, and prejudice, including racism. They learn too from those who have walked similar paths and redirected their lives; successful participants can in turn become role models or youth leaders and participate in the SPS Mentoring Program and other related activities or pursue other career options.

Peacekeepers knows the power of the media too. It is not enough to produce or be success stories—to do wonders with a modest budget of about $50,000 per year—if people don't know, so partnership with *Eagle Feather News*, for instance, gives experience of interviews and opportunities to write about and/or photograph activities.

In a recent 2003 Canadian Centre for Justice Statistics report, *Police Resources in Canada,* Shankarraman (2003) profiles 2002 data concerning policing in Canada: a responsibility of federal, provincial, and municipal levels of government. According to Shankarraman (2003), ''Policing expenditures totalled $7.8 billion in 2002… [representing] an increase of 7 per cent from [a current dollar figure of almost $7.3 billion] 2001.'' Of the total 2002 amount, salaries, wages and benefits accounted for about 80 per cent of policing expenditures. On 15 June 2003, there were 59,494 police officers in Canada, up 1.8 per cent from the 58,422 employed over 2002.

Expenditures on policing by province/territory and RCMP administration (and other costs such as the training academy) are identified in the following figure.

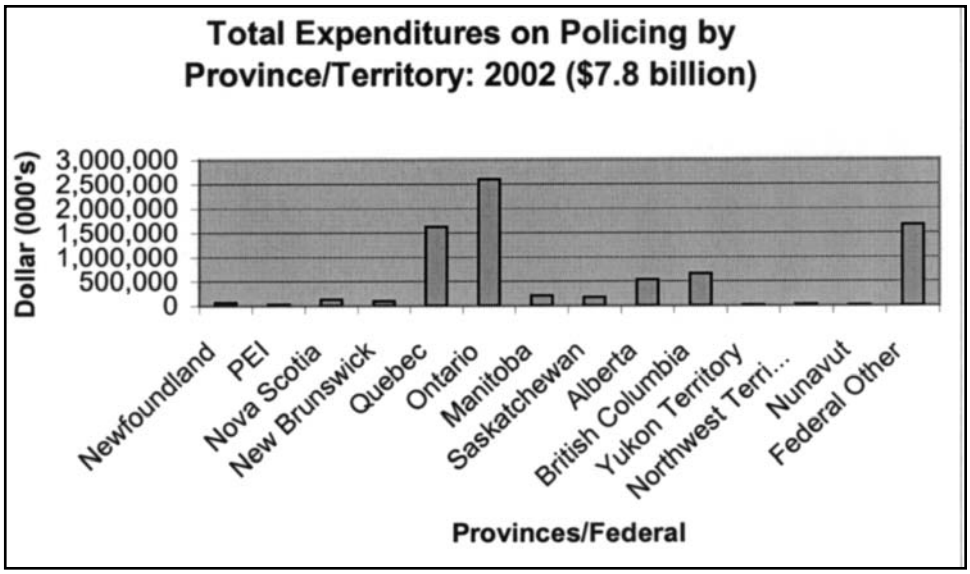


Figure 28-Source: Shankarraman (2003). *Police Resources in Canada*.

According to the Shankarraman (2003) figures, the provinces spent the following amounts on policing in 2002:

Newfoundland	$66,246,000
PEI	$17,067,000
Nova Scotia	$130,545,000
New Brunswick	$104,538,000
Quebec	$1,616,832,000
Ontario	$2,596,184,000
Manitoba	$211,757,000
Saskatchewan	$175,468,000
Alberta	$530,307,000
British Columbia	$654,990,000
Yukon Territory	$10,513,000
Northwest Territories	$19,333,000
Nunavut	$16,207,000
Federal Other	$1,664,423,000
Canada Total	**$7,814,410,000**

According to Shankarraman (2003), Canada ranked 24th in the world with a rate of 182 police per 100,000 population, the same as Japan and New Zealand, but substantially lower than Italy (559 per 100,000) ranked number 1. The United States ranked 14th with 244 police officers per 100,000 population, and Mexico was ranked 29th with an average of only 5 police per 100,000 population.

Shankarraman (2003) also highlights the fact that Saskatchewan "had the most police per capita among the provinces" with 201 per capita in 2003. This was the third year in a row that Saskatchewan leads the other provinces with the most police officers per capita. This is due, in part, to a shrinking population (which forms the denominator for the per capita calculation), and an expanding RCMP presence in the province. Further, Regina "had the most police officers per 100,000 population (202) in 2003" in a Census Metropolitan Area (CMA). Winnipeg ranked 3rd with 184 per 100,000 population, while Saskatoon ranked 5th with 178 per 100,000 population.

Since 1999, Saskatchewan has increased the annual policing budget by a record $18 million, which has provided 132 more police officers.

Source: Saskatchewan Justice and Saskatchewan Corrections and Public Safety (SJSCPS). (2003). *Working Together for Safer Communities*. Report submitted to The Commission on First Nations and Métis Peoples and Justice Reform.

5.3 Prosecutions

A Brief Overview of Prosecutions in Canada

In the Canadian criminal justice system, Crown prosecutors (also called 'Crown counsel' or 'Crown attorneys') are lawyers authorized to represent the Crown before the courts in relation to the prosecution of offences. Responsibility for these activities is divided between the Attorney General of each province and the Attorney General of Canada.

Charging practices are a provincial responsibility. It is important to note that, within Canada, two very distinct policies exist. In British Columbia, Quebec and New Brunswick, a Crown prosecutor normally must give advice or approval before a charge can be laid by the police. In these provinces, police complete a "Report to Crown Counsel", including details of the case and the results of the investigation. These reports are submitted to the office of the Crown counsel for review or approval of the recommendations to lay charges.

In the remaining provinces and territories, police may lay charges on their own, and prosecutors review the charges by way of a post-charge review. To varying degrees, it is common practice for police to approach a Crown prosecutor for legal advice during the course of an investigation, on the drafting of any information, and on other pre-charge issues.

Source: Snowball, K. (2002a). *Criminal Prosecutions Personnel and Expenditures 2000/01*.

There is not a great deal of statistical information available from Statistics Canada or Corrections Canada, for instance, on the prosecutions sector of justice in Canada, a sector where significant discretion is exercised and where there are marked differences across jurisdictions. And there is even less data on the Aboriginal dimension of that sector. This is especially troubling when prosecutorial decisions combine with Aboriginal people's lack of confidence in the system to impact on participation rates, on much heralded cycles of "crime wave," and on jail time becoming a more likely outcome than completed educations or meaningful employment—and with significant socioeconomic consequences for the whole community (Quigley, 1994).

In one of the only current reports on the subject, Snowball (2002a) reports that, in 2000/01, national spending on criminal prosecutions totalled $335.4 million, an increase of $70.8 million over the $264.6 total recorded in 1996/97 (an 18 per cent increase taking into account inflation). Over 80 per cent of the costs went to the payment of the salaries and benefits of the 3,609 full-time (equivalent) people employed in the sector, 60 per cent of whom were staff lawyers.

Snowball (2002a) also explores the relationship between crime rates and youth and adult criminal court caseload data and potential prosecution caseloads across the country. For example, Saskatchewan experienced the highest crime rate in Canada in 2000/01 with 130,306 criminal code incidents (a rate of 12,750 per 100,000 population). Saskatchewan also experienced the highest rate of criminal court caseload, with 35,032 youth and adult cases (or 34.3 cases per 1,000).

5.4 Courts

> **The fundamental issue is the identity of the decision-maker. The Van der Peet test entrenches European paternalism because the courts of the colonizer have assumed the authority to define the nature and meaning of Aboriginal cultures.** (Barsh & Henderson, 1997)

Description of the Court System in Canada

Responsibility for Canada's system of courts is divided between the federal and provincial/territorial governments. The Constitution Act, 1867 gives the federal government authority to create a general court of appeal for Canada and to establish any additional courts for the better administration of the laws of Canada. Section 96 of the Act gives the federal government authority to appoint judges to the superior courts in the provinces and territories. Hence these courts have become known as "Section 96 courts." Under this authority, Parliament has established the Supreme Court of Canada, the Federal Court of Canada, and the Tax Court of Canada. Section 96 courts salaries and benefits as well as some other operational costs are paid by the Office of the Commissioner for Federal Judicial Affairs (OCFJA) and the Treasury Board.

Canadian courts are organized in a four-tiered structure consisting of federally established courts operating at the national level, and federally and provincially established courts operating at the provincial and territorial levels. The Supreme Court of Canada holds the highest position in the Canadian court structure. Below the Supreme Court are the Tax Court and the Federal Court. All three courts have national authority and are the administrative responsibility of the federal government.

The Courts of Appeal, the highest courts in the provinces and territories, make up the second level. These courts are "Section 96 courts," provincially administered but presided over by federally appointed judges. The third level consists of provincial/territorial superior courts, which are also Section 96 courts. Finally, the fourth level is made up of the provincial and territorial courts. At this level, both court

administration and the appointment of judges are the exclusive responsibility of the provincial and territorial governments.

Source: Snowball (2002b). *Courts Personnel and Expenditures 2000/01*. Canadian Centre for Justice Statistics.

The following table shows court expenditures by type and jurisdiction. Other expenditures includes law library fees, witness fees, and other operational costs. Of the total Canadian court expenditures of just over one billion dollars, approximately 80 per cent went to salaries and benefits. Snowball (2002b) highlights the fact that, after taking inflation into account, court expenditures rose by about four per cent from the 1998-99 totals. Almost 12,000 people worked in the court system in Canada: 9,890 (83 per cent) were employed as court staff and 2,011 (17 per cent) were judges.

Table 3: Court Expenditures ($'000) by Type and Jurisdiction, 2000/01

Jurisdiction	Personnel	Sub-Total Salaries & Benefits	Sub-Total Other Expenditures	Total Expenditures
Newfoundland & Labrador	202	13,070	1,781	14,852
P.E.I.	53	3,537	553	4,090
Nova Scotia	594	33,062	7,092	40,154
New Brunswick	292	17,668	4,596	22,263
Quebec	2,262	142,580	22,407	164,987
Ontario	3,380	256,304	75,503	331,807
Manitoba	589	36,809	7,643	44,452
Saskatchewan	398	31,302	9,259	40,561
Alberta	1,316	98,904	25,500	124,404
British Columbia	1,861	126,845	20,981	147,826
Yukon	45	3,528	1,535	5,063
NWT	58	4,901	2,808	7,709
Nunavut	21	1,587	193	1,779
Supreme Court	161	11,880	6,278	18,159
Federal Court	475	32,353	12,958	5,311
Tax Court	147	11,401	6,313	17,714
OCFJA	48	3,672	4,142	7,814
Canada	**11,901**	**829,404**	**209,542**	**1,038,946**

Source: Snowball (2002b). *Courts Personnel and Expenditures 2000/01*. Canadian Centre for Justice Statistics.

Information is collected for both youth and adult court statistics. In her analysis of youth court statistics in Canada, Thomas (2003) found that youth court cases totalled 85,640 for 2001-02, a decrease of two per cent from the previous year, and a 16 per cent drop from 1992-93. Over the 10-year period (1992-93 to 2001-02), crimes against property cases decreased by 41 per cent, while drug-related cases increased by 215 per cent. In 2001-02, youth in the age-range of 16 to 17 years of age accounted for the majority of youth in court, at 54 per cent. Sixty-

one per cent of youth court cases concluded with a finding of guilt, with probation comprising the most serious sentence (at 54 per cent), while custody was ordered 28 per cent of the time. In 2001/02, the median sentence length for probation, secure custody and open custody was 360 days, 30 days, and 36 days respectively.

> **From the** *Young Offenders Act (1984)* **to the** *Youth Criminal Justice Act (2003)*
>
> **Providing effective treatment and rehabilitation of young offenders, and ensuring community safety are primary objectives of the youth justice system. The** *Young Offenders Act (YOA)*, **proclaimed in 1984, introduced rights for adolescents previously guaranteed to adults only. It recognized the special needs that youth have as a result of their varying levels of maturity, the necessity for youth to accept responsibility for unlawful action and the right of society to protection from illegal behaviour. Seventeen years of experience later, new legislation was introduced to reform Canada's youth justice system and provide clearer legislative direction on youth crime. Having received Royal Assent in February, 2002, the** *Youth Criminal Justice Act (YCJA)* **replaced the** *Young Offenders Act* **on April 1, 2003.**
>
> Source: Thomas (2003). *Youth Court Statistics, 2001/02*. Canadian Centre for Justice Statistics.

In his report on adult criminal court statistics for 2001-02, Robinson (2003) reveals that adult criminal courts in ten provinces and territories processed 452,450 cases involving 992,567 charges. In 2001/02, the three most frequently occurring offences were impaired driving (12 per cent of all cases), common assault (11 per cent) and theft (9 per cent). In 2001/02 males and younger adults are over represented in adult courts across Canada, with 83 per cent of all cases at the adult criminal court level involving a male accused, and 15 per cent of involving a female accused. In the other two per cent, the gender of the accused was not recorded, or the accused was a company.

Robinson (2003) also determined that while 18 to 24 year olds comprised 12 per cent of the adult population in 2001/02, they accounted for 31 per cent of all cases in adult criminal court. Further, offenders under 45 years of age accounted for 85 per cent of the total cases heard in adult criminal court, while composing only 53 per cent of the adult population in Canada. In contrast, persons 55 or older represented 28 per cent of the adult population but accounted for less than 5 per cent of the adults involved in criminal court cases.

These and other reports present a plethora of statistical information on the courts, court cases, youth and adult participation rates across the country, and other data (such as type of case, probability of conviction, possible outcomes facing adult and youth offenders upon conviction, and length and cost of court proceedings). The court statistics do not, however, clearly define the experience young and

adult Aboriginal peoples face when they find themselves in court. Neither do the statistics portray the persistent barriers Aboriginal peoples come face-to-face with in the courtroom due to the unique thought and decision-making processes of the judiciary.

In a series of landmark decisions in the 1990s, the Supreme Court of Canada has shown its determination to disavow colonial thinking, change its evidentiary standards, try to meet its obligations to be "sensitive to the Aboriginal perspective," and be flexible in its "generous, liberal interpretation" of constitutional provisions and affirmation of Aboriginal rights (*R. v. Sparrow* [1990]). It has done so by taking a more contextual approach and attending to the exceptional circumstances of Aboriginal offenders. *R*. v. *Van der Peet* [1996] , for instance, is clear on the damage done to Aboriginal rights by the "liberal enlightenment" thinking on which Canadian courts continue to rely (at paras. 18 and 19). In *R v. Gladue* [1999], the Court is clear that, though Canada is "a world leader in many fields, particularly in the areas of progressive social policy and human rights," it is also "distinguished as being a world leader in putting people in prison," incarcerating 130 per 100,000, while the United States leads with the highest rates in the world at 600 per 100,000 (at para. 52).

The Court argues, "in light of the tragic history of the treatment of Aboriginal peoples within the Canadian criminal justice system," the Court has "a judicial duty" to give "real force" (*R v. Gladue* [1999] at para. 34) to section 718.2(e) of the Criminal Code: "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 Court recognizes this "judicial duty" requires altering "the method of analysis" (at para. 33) in the face of enormous and growing disproportion of Aboriginal people in the corrections system and "evidence that this widespread racism [in Canada] has translated into systemic discrimination in the criminal justice system" (*R. v. Williams* [1998] cit. at para 61). Anticipating those who argue for absolute equality before the law, the Court is clear: "The fact that a court is called upon to take into consideration the unique circumstances surrounding these different parties is not unfair to non-Aboriginal people. Rather, the fundamental purpose of s.718.2(e) is to treat Aboriginal offenders fairly by taking into account their difference" (*R v. Gladue* at para. 87).

Though the Court recognizes that "sentencing innovation" (at para. 65) cannot alone remedy injustices against Aboriginal peoples in Canada, it acknowledges its responsibility to be part of the solution. Yet, as the case of Jamie Gladue herself suggests, the Court is not always able to rethink entrenched misconstructions about Aboriginal difference, relevant "circumstances" and "Aboriginal heritage". In its thinking, the Court remains overly positivist in its understanding of the meaning of a life, identity, intentions, and circumstances to account for Aboriginal difference. The Court presumes to know an overly singular "Aboriginal perspective" and an "Aboriginal heritage" associated with a "network of support and interaction" and dissociated from a history of colonial violence. Constrained by inherited categories, the Court cannot see or act on a full range of socio-cultural connections and causalities.

Only when the Court acts more fully on its own initiatives, when it revalues the treaties, Aboriginal knowledge and heritage, the authority of the Elders as much as court and cultural workers, and makes a ''long-term commitment to share the definitional power'' (Monture-Angus, 1999) will courts do their part in stopping the misrepresentation that results in the tragic over-representation of Aboriginal peoples in the prison population. Only when the courts rethink commitments to ''neutral'' categories, over-investments in stare decisis governing notions of proportionality in sentencing will the courts end the over-representation. Only then will the healing properties of the Aboriginal circle be recognized and restored (Findlay, 2001; Findlay, 2003).

5.5 Legal Aid

> **Access to Justice in Canada is a concern for governments and policy-makers, legal professionals, and the public. One aspect of accessibility is access to legal services. Not all Canadians have the resources to pay for a lawyer. Legal aid plans have been established in all provinces and territories, with the common goal of assisting low-income Canadians who require professional legal counsel.** (Tufts & Sudworth, 2003)

Designed to address issues of access to legal services for low-income Canadians, Legal Aid is funded by cost-sharing agreements with the federal government and administered by the provinces and territories, each with its own financial eligibility requirements and operational plan. With total national expenditures increasing by 16 per cent to $593 million (19 per cent on administrative and other costs) and federal contributions increasing by 12 per cent to $92 million (or $3 per Canadian) in 2001-02, Legal Aid approved 510,818 of 838,561 applications, 55 per cent for civil and 45 per cent for criminal matters.

Between 1994-95 and 1998-99, federal funding decreased steadily from $88 million to $82 million before the one-time 2001-02 agreement to address financial stress with the largest contribution in ten years. Meantime, client contributions and cost recoveries amounted to $21 million in 2001-02, an increase of 31 per cent, though as a proportion of total costs, these contributions remain fairly consistent with variations among jurisdictions (high of 9 per cent in Manitoba and low of 1 per cent in Quebec in 2001-02). In almost every jurisdiction in Canada, applicants must provide an assessment of their financial situation and need. The overall trend over the last ten years has seen a reduction in applications and in approvals (from a high of 1.2 million applications in 1992-93 to a low if 801,904 in 1997-98) attributed to these factors: ''pre-screening procedures, changes in legal aid coverage, stricter eligibility requirements, and an increased use of duty counsel or *pro bono* services (services without charge) provided by private lawyers'' (Tufts & Sudworth, 2003).

In most jurisdictions, criminal legal aid covers indictable offences and summary offences where imprisonment is likely, while civil legal aid covers family matters (Saskatchewan, New Brunswick and Yukon Territory) and, in some jurisdictions, extends to landlord-tenant disputes, property, social assistance, consumer

protection, and even refugee and Mental Health Act matters. Personnel increased by 2 per cent to 3,001, 36 per cent of whom are lawyers, and services may extend to research, advocacy, and education programs. Saskatchewan operates on a staff system where lawyers are employed to provide legal aid services, though the private bar may be enlisted when circumstances warrant. Ontario and Alberta operate primarily judicare systems involving private lawyers billing for services, while other jurisdictions operate with a mixed system, combining both staff and judicare (Tufts & Sudworth, 2003).

Legal Aid Delivery Systems in Canada

Canada provides legal aid through separate legal aid plans in each of the provinces and territories. Though each provincial/territorial government has developed its own personalized legal aid scheme, three general models have been adopted to deliver legal aid services: judicare, staff and mixed.

Judicare, **a fee-for-service system, uses private lawyers who bill the legal aid plan for their services. The client may retain any lawyer who is willing to accept the case. Ontario and Alberta are the only provinces that operate judicare systems.**

A staff system **directly employs lawyers to provide legal aid services. Newfoundland and Labrador, Prince Edward Island, Nova Scotia and Saskatchewan have adopted this approach. Even in staff systems, the private bar is used when circumstances warrant, such as conflict of interest, or unavailability of a staff lawyer.**

A combination of the judicare and staff systems, a mixed system utilizes both private and staff lawyers in the provision of legal services. The remaining jurisdictions (New Brunswick, Quebec, Manitoba, British Columbia, Yukon Territory, Northwest Territories, and Nunavut) operate mixed systems of legal aid. In most of these jurisdictions the client has the right to choose counsel, either staff or private, from a 'panel' of lawyers providing legal aid services.

Source: Tufts & Sudworth. (2003). *Legal Aid in Canada: Resource and Caseload Statistics 2001/02*. Canadian Centre for Justice Statistics.

Though the Legal Aid Survey does not identify who is applying for legal aid, the Saskatchewan Legal Aid Commission does supply some demographic information in its annual report for 2001-2002: 81 per cent on social assistance, 71 per cent of Aboriginal descent, 65 per cent male, and 35 per cent female (Tufts & Sudworth,

2003). But the statistics don't tell the whole story. If the colonial history of Aboriginal peoples has served as a barrier in the past, geography aggravates issues of access in the present.

In the north Legal Aid lawyers often have too little time in communities, accused peoples have limited access, and interviews are often conducted in less than ideal settings. Even the complaints process if people feel aggrieved at their treatment represents significant barriers: the *Legal Aid Act* stipulates complainants may appeal within 20 days of the decision to the Chief Executive Officer whose decision is final unless it is a matter of financial eligibility involving a civil matter, where the decision may be appealed to the Civil Appeal Committee.

Although the *Youth Criminal Justice Act* (YCJA) promotes community-based rather than court-based alternatives for youth accused of less serious offences, youth can apply for legal aid. However, youth are disinclined to make full use of the legal aid option.

In Saskatchewan $11,904,000 was spent on legal aid services: $7,444,000 (63 per cent) on criminal matters, and $3,581,000 (30 per cent) on civil matters. In Saskatchewan, civil matters include family matters only. The remaining $879,000 (7 per cent) was spent on central administrative and other expenses. Legal aid spending in Saskatchewan increased steadily during the period of 1997-98 to 2001/02 (see figure).

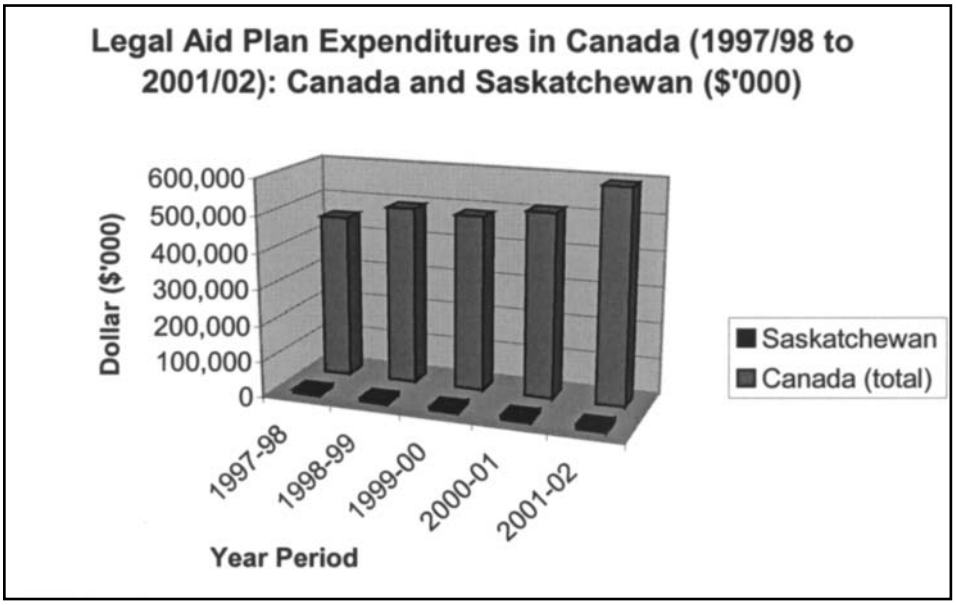


Figure 29-Source: Tufts & Sudworth. (2003). *Legal Aid in Canada: Resource and Caseload Statistics 2001/02*. Canadian Centre for Justice Statistics.

Tufts & Sudworth (2003) find the dollar amounts related to the growth of spending on legal aid in Canada and Saskatchewan respectively are: 1997-98 ($454,643,000 and $9,560,000); 1998-99 ($494,409,000 and $10,111,000); 1999-00 ($487,106,000 and $10,616,000); 2000-01 ($512,107,000 and $10,989,000); and 2001-02 ($593,117,000 and $11,904,000).

There is not a great deal of statistical information generally available regarding the Aboriginal participation rate in and experience with the various legal aid plans offered across Canada.

5.6 Corrections

> **They [mandatory sentences] have not stemmed the drug trade. They only thing they have done is to fill the prisons.** (Retired Republican New York State Senator John Dunne)
>
> **While America has about 5 per cent of the world's population, almost one in four persons incarcerated worldwide are incarcerated in the US.**
>
> **No functioning democracy has ever governed itself with as large a percentage of its adults incarcerated as the United States.** (Human Rights Watch)
>
> **—Beatty, Holman, & Schiraldi (2000)**

U.S. trends in incarceration over the last two decades present some salutary lessons for decision-makers in Canada. Severely punitive sentencing policy as well as prohibitions on parole in some jurisdictions during that period has increased incarceration numbers to 2.1 million in 2003—quadruple the number in 1980 despite crime rates that have fallen or levelled off since the early 1990s (Butterworth, 2003). Some of the results of the nineties, "the most punishing decade" in U.S. history, include:

- 816,965 additional inmates (compared with 462,006 from 1910 to 1980).
- cost of $40 billion for prisons and jails in 2000 alone.
- $24 billion for non-violent offenders in 2000; $9.4 million for non-violent drug offenders.
- 458,131 inmates for drug offenses (European Union with 100 million more citizens than US 356,626 *for all offenses*).
- rise in youth admitted to state prisons for drug offenses from 31 per 100,000 (1986) to 122 per 100,00 in 1996.
- five times as many whites using drugs as African Americans.

- young, African American men admitted to state facilities for drug offenses at rate 13.4 times the rate of white youth.

- 13 per cent of African American men losing right to vote as a result of involvement in criminal justice system.

- prison budgets in mid-nineties California and New York exceeding the budget for higher education. (Beatty, Holman, & Schiraldi, 2000)

These US trends disproportionately affecting youth and African Americans created a prison building boom as well as financial crises for state legislatures. And a Center for Disease Control Study found not decreases but increases in drug use among high school children in the 1990s, including a doubling of cocaine use, while a 1997 RAND corporation study found spending on drug treatment was four times more effective in reducing drug consumption than the same amount on law enforcement, seven times more effective than longer sentences, and fifteen times more effective than mandatory sentences (Beatty, Holman, & Schiraldi, 2000).

Similarly, New Jersey's mandatory imprisonment for drug offenses produced:

- the highest drug prison admission rates in the US.

- yet higher proportions of drug offenders.

- racially discriminatory incarceration practices.

- increasing proportions of female drug prisoners.

- drug incarceration costs exceeding one third of state's spending on entire corrections system. (Schiraldi & Ziedenberg, 2003)

Meanwhile, in Alabama, extreme fiscal retrenchment has left the prison system looking like "a third world country," according to Rosa Davis, chief assistant attorney general of the state (qtd. in Butterworth, 2003).

In addition to spending $10 billion a year imprisoning drug offenders and billions more on the so-called "War on Drugs," the U.S. is only now coming to terms with the broader impact of such incarceration statistics on the socio-economic life of communities, states, and country and the benefits to all of treatment, parenting, and educational programs that return employable parents to society (Schiraldi & Ziedenberg, 2003).

The result of soaring costs without commensurate benefits to recidivism or reductions in drug use, for instance, has been a significant change in policy orientation from a very costly determination to be "tough on crime" to a commitment to the new mantra celebrating efforts to be "smart on crime." Such rethinking has brought together those who oppose long sentences on principle and those who simply find them too expensive (Butterworth, 2003).

In 2003 approximately 25 states have passed legislation covering some or all of these initiatives:

- reducing or eliminating mandatory minimum sentences.
- restoring early release for parole.
- eliminating parole supervision for low-risk offenders.
- offering treatment and work-release programs for drug offenders.
- mandating treatment instead of incarceration for first-time drug offenders (non-violent).

Savings in New York alone could reach $21 million yearly if an estimated 1,185 inmates are released early on new certificates for good behaviour, while the advocacy group Families Against Mandatory Minimums claims savings of $41 million in 2003 for Michigan as a result of repealing its mandatory minimum drug sentences. Kansas anticipates diverting 1,400 (or 15.55 per cent of total) offenders to treatment, while Washington projects savings of $45 million per year (Butterworth, 2003).

5.6.1 Adult Offenders

> **A place like this [Kingston Prison for Women] breeds a new kind of woman.. . . They literally age before you. . . . I have no mirror hanging in my cell, because prison time lies so heavy on the mind and spirit I can see my age in the face of everyone around me. Women age faster in prison than men.** (Yvonne Johnson; Wiebe & Johnson, 1998)

While the median age of Canadians in 1996 was 41 years of age, the median age of adult offenders was 32, and 29 for Aboriginal offenders. Aboriginal men (20-24) accounted for 22 per cent of provincial/territorial inmates, though they represent only 9 per cent of the population. They come disproportionately from inner-city neighbourhoods of Prairie cities (Boe, 2002). In addition to the 18 per cent Aboriginal offenders in federal custody, another 12 per cent of those on conditional release are Aboriginal. In the Prairie region, 41 per cent of the federally-incarcerated are Aboriginal as well as 32 per cent serving time in the community. Though these offenders are overwhelmingly male, single (about 50 per cent), and young (69 per cent of Aboriginal males are less than 35 as opposed to 55 per cent non-Aboriginal), 4 per cent are Aboriginal women—double the percentage for non-Aboriginal women. Twenty-six per cent of Aboriginal offenders (18 per cent non-Aboriginal) have less than grade 8 education, while 75 per cent are unemployed at admission as opposed to 66 per cent of non-Aboriginal (Trevethan, Moore, & Rastin, 2002). Significantly too, female offenders are now more likely to be involved in violent offences (often associated with drug and alcohol use) and in Saskatchewan female offenders face higher average sentence lengths than in other jurisdictions (SJSCPS, 2003).

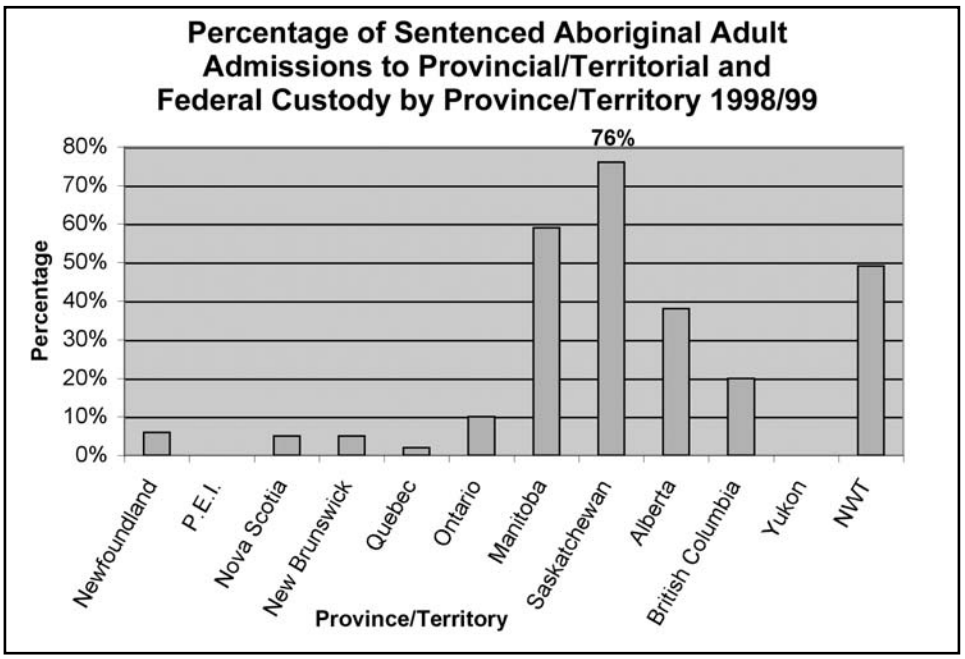


Figure 30-Source: Statistics Canada (2000b). Adult Correctional Services 1998/99

The Total Number of Sentenced Admissions to Provincial/ Territorial and Federal Custody in Canada in 1998/99 was 93,045. **Saskatchewan had 3,850 sentenced admissions to provincial/territorial and federal custody (6th largest of provinces/territories). The three largest, from 1st to 3rd, were Ontario (32,815), Quebec (21,735), and Alberta (15,491).**

The Total Number of Aboriginal Sentenced Admissions to Provincial/Territorial and Federal Custody in Canada in 1998/99 was 13,389. **Saskatchewan ranked third after Ontario and Alberta in actual numbers of Aboriginal sentenced admissions: Alberta had 5,887 Aboriginal sentenced admissions (of 15,491), Ontario had 3,281 (of 32,815) and Saskatchewan had 2,926 (of 3,850).**

Source: Statistics Canada (2000b). Adult Correctional Services 1998/99

A history of "not so benign neglect and paternalism" (Jackson, 1988a) has characterized the treatment of First Nations and Metis women once they enter Canada's prisons, which they continue to do disproportionately. While 3 per cent of the population is Aboriginal women, 21.1 per cent of women incarcerated in federal institutions are Aboriginal. Of the 53 penitentiaries under the Correctional Service of Canada, five are regional women's institutions and one a women's healing lodge (Okimaw Ohci Healing Lodge). Women have been moved around in the prison population for men's convenience and removed from family and other supports disproportionately. Currently, there are 31 women from

Saskatchewan in the Edmonton Institution for Women, for instance (Krause, 2003). Between 1968 and 1988—without immediate effect—no fewer than 13 government studies recommended the closure of the federal prison for women (Jackson, 1988a).

And most of the programming has been based on research on men with the effect, for instance, of disproportionately classifying women as dangerous. And Aboriginal women tend to higher security classifications than non-Aboriginal, according to Verbrugge & Blanchette (2000): minimum 29 per cent (versus 55 per cent); medium 60 per cent (versus 42 per cent); and maximum 10 per cent (versus 3 per cent). This tendency is exacerbated when mental health disabilities are associated with risk and mental and physical disabilities are factors in determining security classification in s. 17 of the regulations (Canadian Assoc. of Elizabeth Fry Societies, 1998-99), although programs are now being designed especially for women (mother-child residential and survivors of abuse and trauma programs, for instance). If in the case of men, numbers were too many to make government action feasible, in the case of women their few numbers in prison became not the reason to act but the excuse for inaction (Jackson, 1988a).

> **In prison most women understand my story; it's so much their own.** (Yvonne Johnson)

Yvonne Johnson has spoken eloquently about the differential effects of incarceration for men and women—and the bonds between women. While men pump iron and maintain their dreams and indeed expectations of retaining their women or finding a new one, persistent double standards deny such possibilities for women:

> **If a woman has borne children, they'll have been adopted away into foster homes; if she screws around like men do she's just a whore, and worse than any because she has done heavy time. A woman on parole can't run wild like a man because her children will suffer. Men generally don't care about their kids. . . . Who cares—some woman, somewhere, is taking care of them.**

And the women in prison share Johnson's own experience of abuse—90 per cent of Aboriginal women in federal prisons report a history of physical abuse and 61 per cent a history of sexual abuse (Elizabeth Fry, 1993). Yvonne finds, "In prison most women understand my story; it's so much their own." And each copes with the past and dangers in the present in her own way. Yvonne aims not to think about her children and the reality that they too may be suffering abuse—"to keep insanity at bay she has to shut down. She's isolated, no lover, no motherhood. She ages fast into something dry; hard; shrivelled" (Wiebe & Johnson, 1998).

The statistics related to adult corrections cannot take these and other stories into account. But an understanding of the cost of adult corrections and the make-up of adult offenders can shed light on the general trends in corrections in Canada, including a specific picture of the over-representation of Aboriginal adults in federal institutions and programs.

Correctional Facilities Across Canada

In 2001/02, there were 198 correctional facilities across Canada. Slightly more than one third of these, or 68, were under federal jurisdiction: 16 facilities were federal community correctional centres with a capacity of 482 spaces, and 52 were federal institutions with 13,682 spaces. Federal facilities provided 40 per cent of the total institutional capacity in Canada and capacity has increased by 10 per cent since 1995/96. A total operational capacity of 21,090 spaces was reported in 130 provincial and territorial facilities. Seventy-nine per cent (103) of these facilities were secure and the remainder (27) were open (minimum security). Since 1999/00, the capacity of correctional facilities—federal, provincial and territorial—has increased by 5 per cent.

Source: Carrière, D. (2003). Adult Correctional Services in Canada, 2001/02. Canadian Centre for Justice Statistics.

Carrière (2003) stresses that on an average day in 2001/02 "approximately 155,000 adults were either in custody or under supervision in the community in Canada. The adult correctional population in custody numbered slightly over 32,000 (21 per cent) while just under 123,000 offenders (79 per cent) were supervised in the community." The total incarceration rate for Canada was 133 inmates per 100,000 people in the adult population in 2001/02. The cost of adult corrections in Canada in 2001/02 was over $26 billion, including federal (at 55 per cent) and provincial (at 45 per cent) correctional systems. In 2001/02, women constituted 9 per cent of provincial and territorial admissions, 5 per cent of federal admissions, and 17 per cent of probationers: proportions that have not changed much over the last several years.

An earlier report written by Finn, Trevethan, Carrière & Kowalski (1999) found that Aboriginal inmates differed from non-Aboriginal in the following ways:

- were incarcerated for assault offences more often than non-Aboriginal inmates
- were younger on average, had less education, and were more likely to be unemployed than non-Aboriginal inmates
- were considered higher risk to re-offend and had higher needs than non-Aboriginal inmates.

5.6.2 Youth Offenders

We incarcerate youth at a rate four times that of adults and twice that of many U.S. states. We incarcerate youth despite the fact that we knowingly run the risk that they will come out more hardened criminals and we incarcerate them

> **knowing that alternatives to custody can do a better job of ensuring that youth learn from their mistakes.** (Then Justice Minister Anne McLellan; qtd. in Green & Healy, 2003)

Marinelli (2002) begins her report on *Youth Custody and Community Services in Canada, 2000/01* by challenging the presumption that deterrence is best achieved by punishment:

> **Incarceration of youth has been accepted as one method of deterring youth from criminal behaviour. However, it has been argued that the "get tough" approach and its focus on punitive measures does not provide youth with effective treatment and rehabilitation that are needed to successfully reintegrate them back into the community.** (Varma & Marinos, 2000; Bala, 1997; Baron & Hartnagel, 1996; cit. Marinelli, 2002)

Marinelli (2002) establishes that in 2000-2001 there were 14,909 admissions to sentenced custody in Canada, a decrease of 6 per cent from the 15,729 admissions recorded ten years earlier in 1999-2000. Aside from sentenced custody, youth correctional services admissions for 1999-2000 and 2000-2001 also include remand (9,933 in 1999-2000 and 9362 in 2000-2001) and probation (35,681 in 1999-2000 & 36,509 in 2000-2001). She goes on to report that, of the 14,909 admissions in 2000-2001 to sentenced custody, 6,958 youth went to secure custody, while the other 7,951 youth went to open custody.

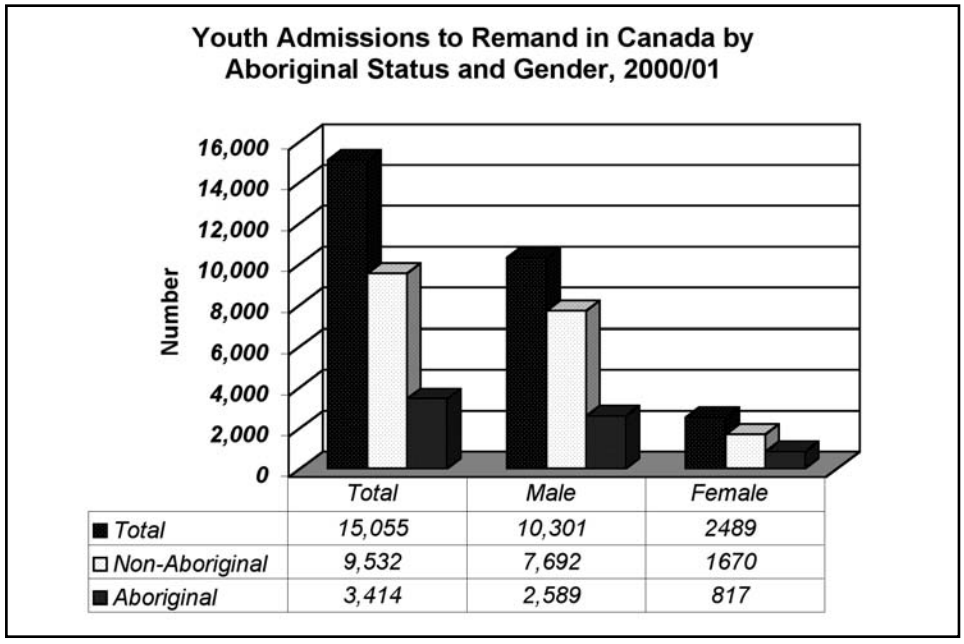
> **Definitions Related to Youth Offenders in Canada**
>
> *Custody:* **A status that requires the young offender to spend time in a designated correctional facility, either in secure custody, open custody or remand as ordered by the youth court.**
>
> *Open custody:* **The Young Offenders Act defines open custody as "custody in (a) a community residential centre, group home, childcare institution, or forest or wilderness camp or (b) any like place or facility". A facility is considered "open" when there is minimal use of security devices or perimeter security. The extent to which facilities are "open" varies across jurisdictions.**
>
> *Probation:* **A common type of community-based disposition, where the offender is placed under the supervision of a probation officer or other designated person. This includes both supervised and unsupervised probation.**
>
> *Remand:* **To hold a young person temporarily in custody, pursuant to a Remand Warrant, while awaiting trial or sentencing, or prior to commencement of a custodial disposition.**

Secure Custody: **Under the Young Offenders Act a facility is considered secure when youths are detained by security devices, including those which operate with full perimeter security features and/or where youths are under constant observation. The extent to which facilities are "secure varies across jurisdictions.**

Young Offender: **A person who is twelve years of age or older, but less than eighteen years of age, at the time of committing an offence.**

Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.

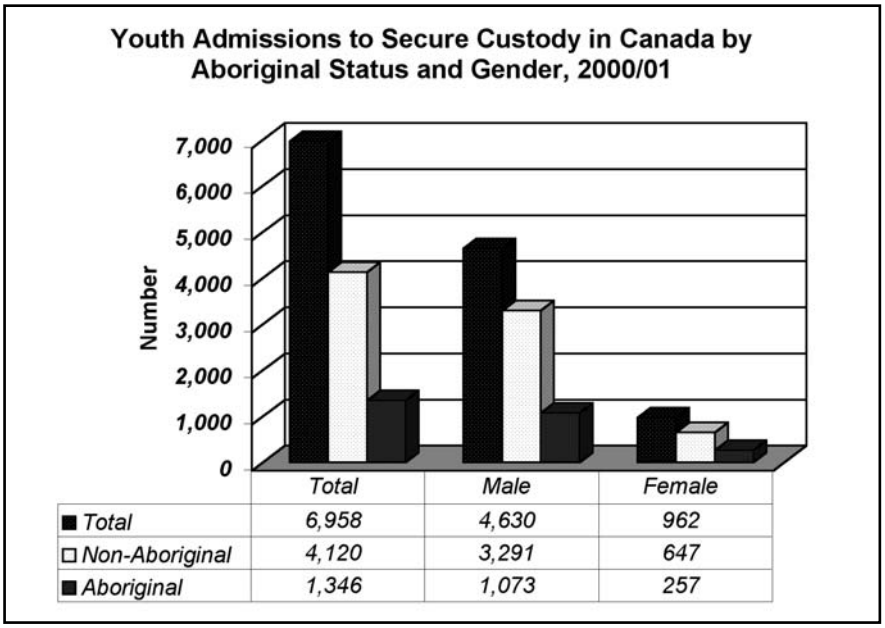
The statistics provided by Marinelli (2002) show that male youth, like male adults, comprise the majority of those individuals involved in crime. Aboriginal youth are over-represented in all areas of youth corrections (described in detail later in this section). Approximately 80 per cent of youth in remand and about 50 per cent of youth in sentenced custody were released within one month of admission. Property offences, such as break and enter, accounted for about 40 per cent of youth sentenced to secure and open custody, while violent offences represented about 27 per cent of youth sentenced to secure and open custody. Most young offenders are on probation for more than six months, the median probation occurring at about the one-year mark. During 2000-2001. British Columbia recorded the lowest rate of youth offenders in custody (9 for every 10,000 youth), while Saskatchewan had the highest rate (36 per 10,000 youth).



	Total	Male	Female
■ Total	15,055	10,301	2489
□ Non-Aboriginal	9,532	7,692	1670
■ Aboriginal	3,414	2,589	817

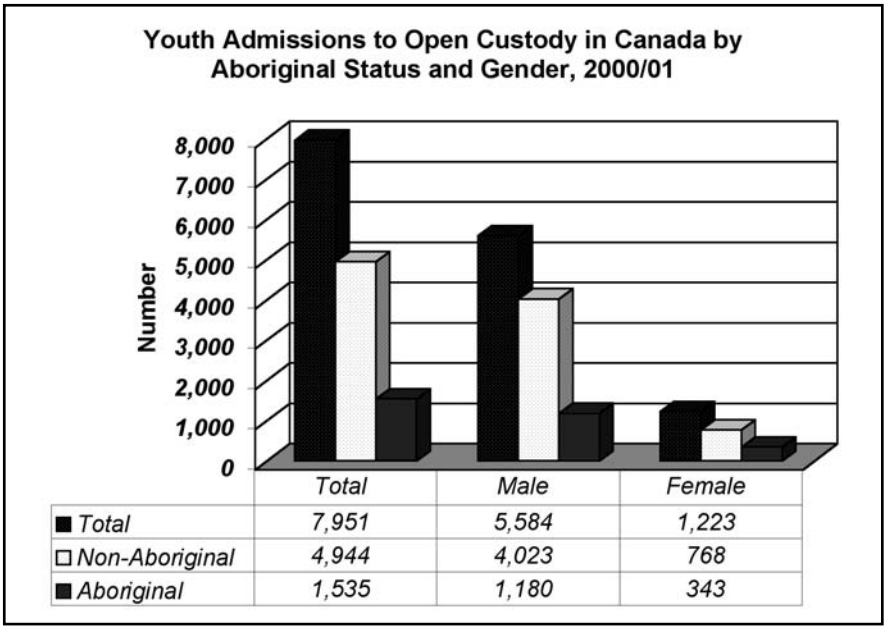
Figure 31-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.

Figures 31-37 represent youth admissions to remand, secure custody, open custody and probation by Aboriginal status and gender, 2000/01 in Canada and Saskatchewan. N.B. No remand statistics are available for Saskatchewan, and discrepancies among the figures are due to uncertainty about gender/sex and Aboriginal status (which were listed in the original study as "unknown").



	Total	Male	Female
Total	6,958	4,630	962
Non-Aboriginal	4,120	3,291	647
Aboriginal	1,346	1,073	257

Figure 32-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.



	Total	Male	Female
Total	7,951	5,584	1,223
Non-Aboriginal	4,944	4,023	768
Aboriginal	1,535	1,180	343

Figure 33-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.

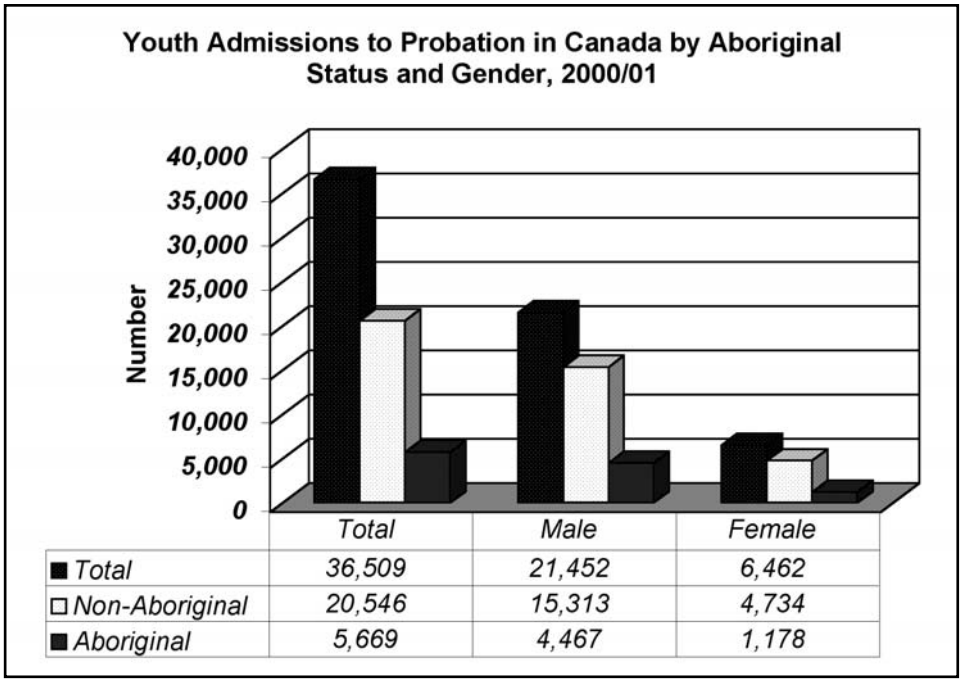


Figure 34-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.

The overview presented by Marinelli (2002) gives a useful context for the following discussion of Aboriginal over-representation in the youth correctional system. Her data importantly reveals that in 2000-2001 about 25 per cent of youth admitted to remand or sentenced custody were Aboriginal youth at a time when only 5 per cent of the youth population in Canada were Aboriginal youth. A comparison of the Canadian versus the Saskatchewan statistics across the three areas of youth custody and community services reveals stark differences between Aboriginal and non-Aboriginal youth rates of participation in a 2000 youth population (12 to 17 years of age) for Canada and Saskatchewan respectively of 2,452,048 and 95,418.

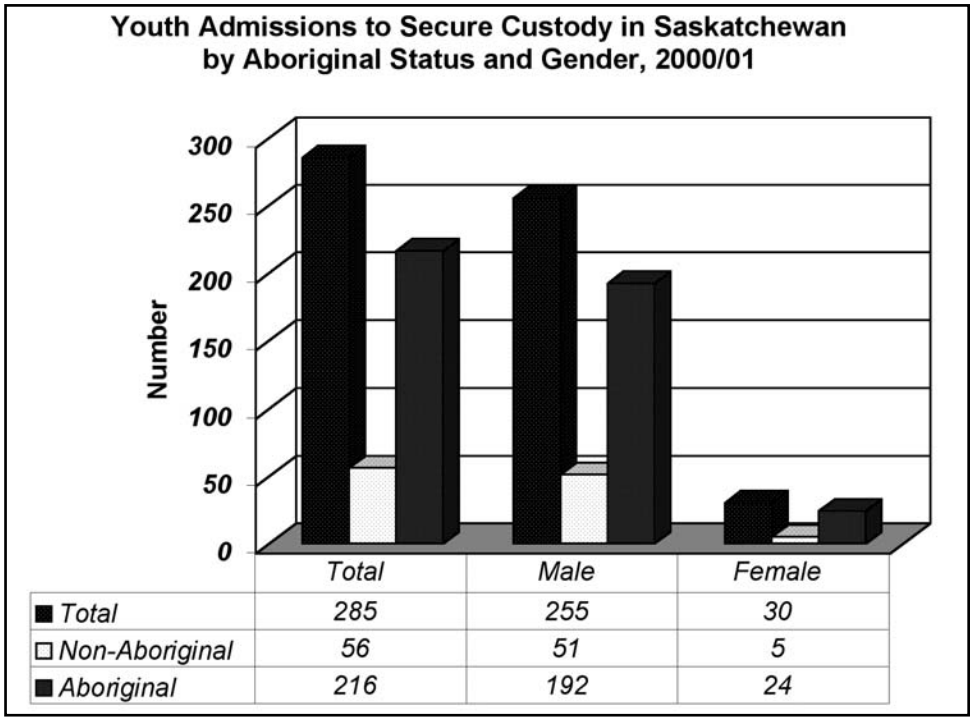


Figure 35-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.

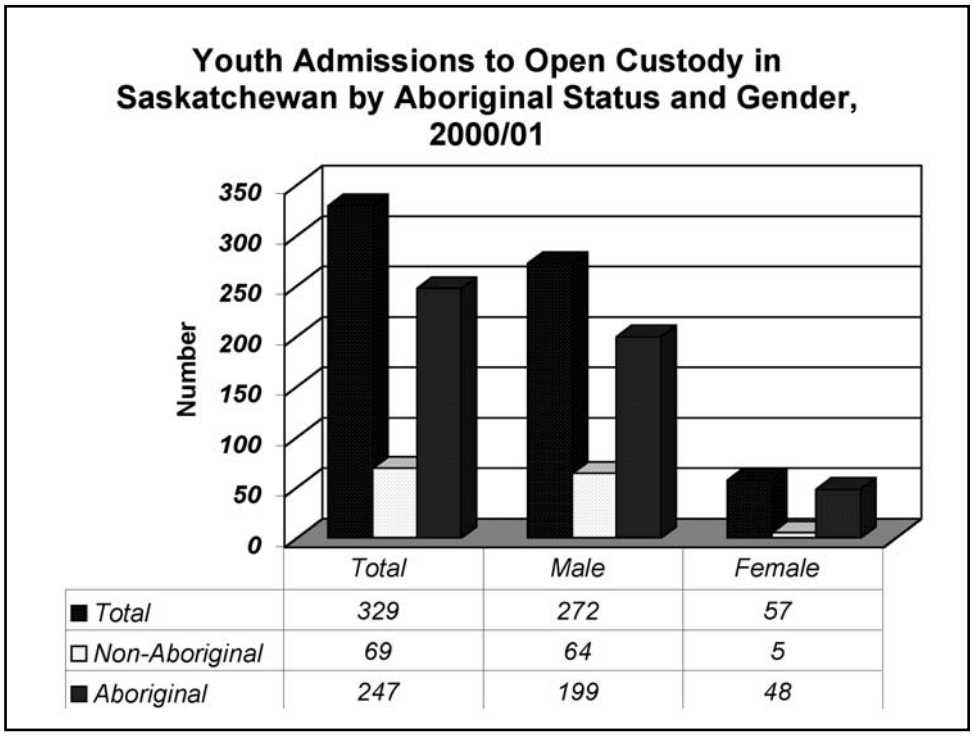


Figure 36-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.

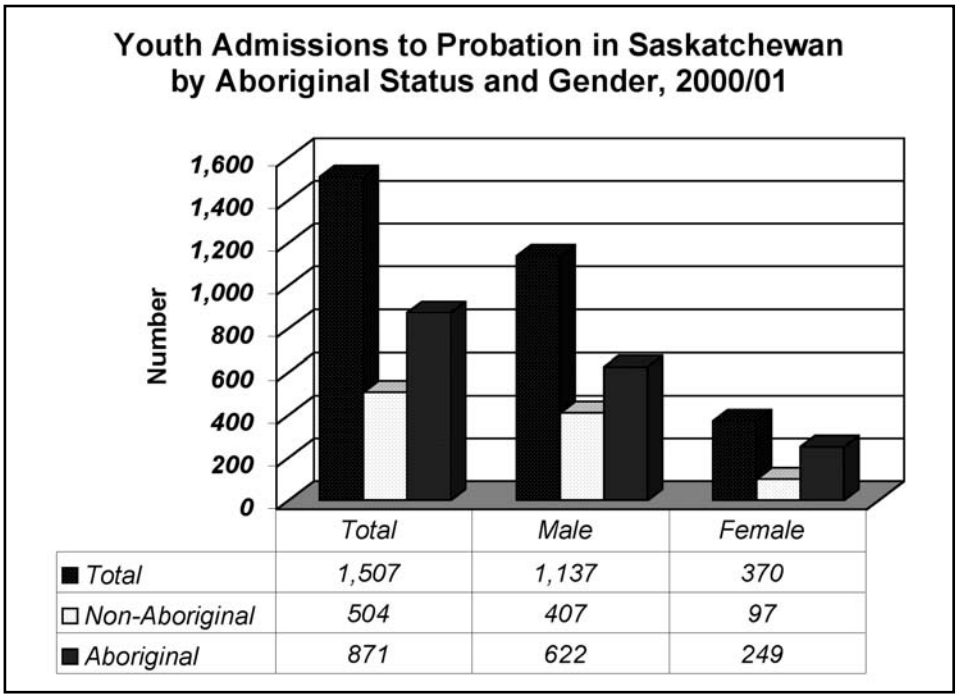


Figure 37-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.

In an effort to address the issue of over-representation of Aboriginal youth at every stage of the criminal justice process and react to charges that the justice system fails to meet the needs of Aboriginal youth, Bittle, Quann, Hattem, & Muise (2002) provide an extensive analysis of a one-day snapshot of Aboriginal youth in custody across Canada. The number of Aboriginal youth in custody (open, secure, or remand) for that day was 1,148 in total. Of that total, 82 per cent were male. Most of the Aboriginal youth in custody (52 per cent) were between 16 and 17 years of age; although male youth were older than female youth, most were between 14 to 15 years of age. The largest proportion (78 per cent) of Aboriginal youth in custody was Native North American, 90 per cent of whom were Status Indian. The next largest group was Metis (17 per cent), followed by Inuit (3 per cent) and Inuvialuit (2 per cent) youth.

Bittle, Quann, Hattem, & Muise (2002) present data on the type of offence, sentence length, where the youth lived prior to admission, location of the offence, and planned destination upon release. Eighty-six per cent of the Aboriginal youth in the study in open and secure custody were found guilty of a property offence (48 per cent) or an offence against the person (38 per cent). For those Aboriginal youth in remand, the numbers were the same for both property offences (39 per cent) and offences against the person (39 per cent). Two years before their admission, most of the Aboriginal youth spent their time in a city (53 per cent) or town (21 per cent), while 23 per cent lived on an Aboriginal reserve during that time. It is interesting to note that younger Aboriginal youth were more likely to have spent time in a city two years prior to being admitted into custody, while the older youth were more likely to have lived on a reserve.

Likewise, 58 per cent of the Aboriginal youth studied committed or allegedly committed their offence in a city. Fifty-five per cent planned on relocating to the city upon their release from custody. For Aboriginal youth, participation in the justice system was primarily a city-based experience.

In the bulk of their report, Bittle, Quann, Hattem, & Muise (2002) also analyze the data by province and territory. For Saskatchewan, 264 Aboriginal youth were recorded. Overall, Ontario had the largest proportion of Aboriginal youth in custody (24 per cent) while Saskatchewan was second with 23 per cent. Eighty-three per cent of the Saskatchewan population was male, similar to the Canadian rate. However, compared to national statistics, a larger proportion of female Aboriginal youth were represented in the older age group (55 per cent in the 16 to 17 years of age), and more of the youth (83 per cent) were Native North American. This group included a larger proportion of Status Indian youth (93 per cent). For Saskatchewan Aboriginal youth, conflict with the justice system was primarily urban. Similar to the Canadian data, most Aboriginal youth in Saskatchewan committed their offence or alleged offence in a city, and most planned on relocating to a city upon release. Many of the Aboriginal youth experienced conflict with the justice system in the city even though they lived on-reserve.

According to data received from Corrections and Public Safety Saskatchewan (McIlmoyl, 2003b) the majority of Aboriginal youth in both open and secure custody are Native North American (including status and non-status) the largest proportion being Aboriginal Status Indian youth. Metis youth account for 10 to 14 per cent of the population in open and secure custody from 1998-99 to 2002-03. It appears that the increase in Aboriginal youth defined as Status Indian may be due, in part, to changing definitions: for example, as the 'Status Indian' numbers in open custody increase from 1999-00 to 2002-03, the youth defined as 'Other' declines at approximately the same rate (see Figures 38 and 39).

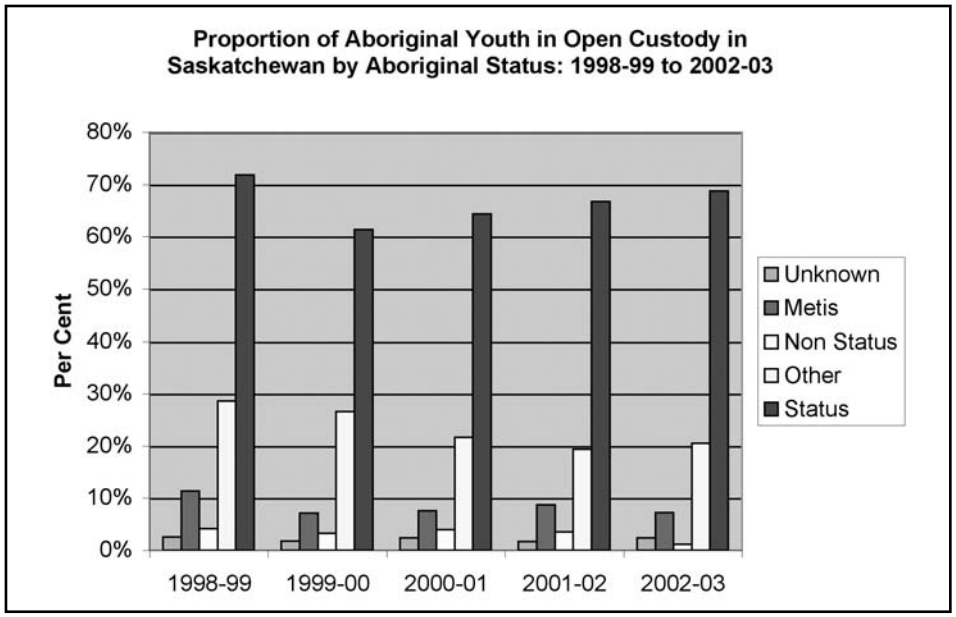


Figure 38-Source: McIlmoyl (2003b).

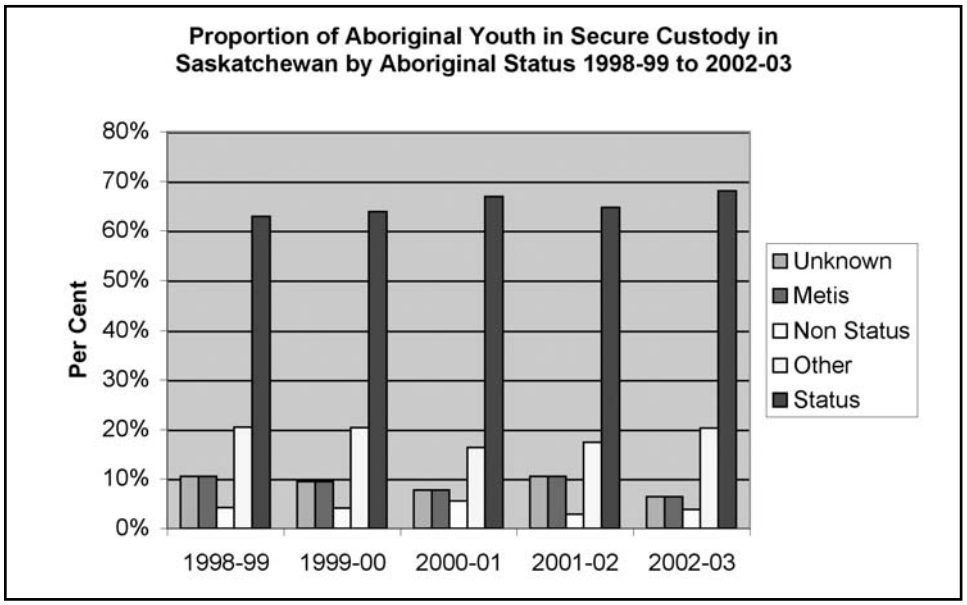


Figure 39-Source: McIlmoyl (2003b).

5.7 Justice System Participation and Cost Projections

Over the past 20 years and more, a cadre of analysts, writers, and researchers has studied the continued "over-representation" of Aboriginal peoples in the Canadian justice system. They have done so from a number of different angles and have made numerous recommendations. In this section, to add impetus to recommendations for change, projections on the cost of the continued Aboriginal participation in the five justice sectors of policing, legal aid, prosecutions, courts, and corrections (for youth and adult offenders) are calculated. We begin with the overall cost of operating these five sectors in Saskatchewan, along with figures on how many people in Saskatchewan are involved and participate in these sectors. Based on historical financial data and rates of participation, projections are presented for future costs and participation rates over the 20-year period starting 2002 and ending 2021. In most cases, the year 2001 (or 2000-01) provides the base line figures on which projections are made.

The proportional representation of Aboriginal peoples within the total number of those that participate in the five sectors of justice is then calculated, and projected to 2021 using growth rate projections from the total Aboriginal population in Saskatchewan. Proportional costs are then calculated for the Aboriginal participants across all five sectors of justice. The analysis ends with the summation of all of the cost projections, culminating in a grand total: the overall cost of Aboriginal participation in the justice system of Canada over the 20-year period starting 2002 and ending 2021—if nothing is done to curb the increase in Aboriginal participation. This final financial figure is but one symbol—one strong indication—of the cost of doing nothing for Aboriginal people in particular and for the Saskatchewan population in general! These figures too add to incentives for change, incentives to reassess the non-financial benefits as well as the financial costs of what we currently do in the name of

justice and what we might do alternatively to achieve the Commission mandate of working together for "a healthy, just, prosperous and safe Saskatchewan."

The analysis begins with a section on policing forecasts, followed by a section that combines three areas of justice including prosecutions, courts, and legal aid. The third and fourth sections necessarily divide the analysis of corrections into more manageable provincial and federal corrections segments. The final section presents all five areas of justice combined into a final financial projection: a numerical picture of the cost of doing nothing.

In the following analysis it is assumed that the costs of Aboriginal adult and youth participation in justice, such as provincial corrections, is proportional to their numbers over the total participation rate. It is further assumed that growth in the participation rates and associated costs in provincial youth and adult corrections are a function of the growth rate of Aboriginal youth and adults in the general Aboriginal population of Saskatchewan. Yet it is important to acknowledge that ours is a crude calculus here because it reduces the complex human interactions of the justice system, including systemic and other barriers to justice, to a matter of statistical trends. But those trends (even if they omit such substantial variables) do tell part of the story in that if we do nothing to change the way we think, act, and react to the statistical trends of the past, then this is what the picture might look like in 2021.

5.7.1 Policing

In Saskatchewan, the cost of policing across municipal, provincial and federal sectors has risen consistently over the five years beginning 1998 and ending 2002 (see Table 4). Saskatchewan Justice and Saskatchewan Corrections and Public Safety (2003) report that: "Since 1999, Saskatchewan has increased the annual policing budget by a record $18 million, which has provided 132 more police officers."

Table 4-The Historical Cost of Policing in Saskatchewan by Jurisdiction (1998 to 2002)

Jurisdiction	1998	1999	2000	2001	2002	Growth rate
Municipal	$88,810,000	$93,844,000	$98,558,000	$102,151,000	$106,276,000	3.656%
Provincial	$57,845,000	$57,294,000	$63,030,000	$63,956,000	$69,191,000	3.647%
Federal	$67,412,000	$62,926,000	$67,102,000	$74,485,000	$87,811,000	5.430%

These historic numbers provide the basis for the calculation of a rate of growth for policing across each of the three jurisdictional cost centres: municipal (3,656 per cent), provincial (3.647 per cent), and federal (5.430 per cent). These growth rates are then projected forward to 2021, providing figures related to the cost of policing in Saskatchewan across municipal, provincial, and federal policing for the period 2002 to 2021. These projections, forecast at the medium discount rate of 3 per cent, are presented in Table 5.

Table 5-The Projected Cost of Policing in Saskatchewan by Jurisdiction (2001 to 2021) at 3 Per Cent Discount Rate

	Municipal Gov Exp	Provincial Gov Exp	Federal Gov Exp	Total Policing Costs all Gov
2000-2001 (base)	98,558,000	63,030,000	67,102,000	228,690,000
2001-2002 (base)	102,151,000	63,956,000	74,485,000	240,592,000
2002-2003 (base)	106,276,000	69,191,000	87,811,000	263,278,000
2003-2004	106,973,226	69,638,669	89,944,410	266,556,305
2004-2005	107,675,027	70,089,235	92,129,652	269,893,914
2005-2006	108,381,432	70,542,715	94,367,986	273,292,133
2006-2007	109,092,471	70,999,130	96,660,700	276,752,302
2007-2008	109,808,175	71,458,498	99,009,118	280,275,791
2008-2009	110,528,574	71,920,838	101,414,591	283,864,004
2009-2010	111,253,700	72,386,169	103,878,507	287,518,376
2010-2011	111,983,583	72,854,511	106,402,285	291,240,378
2011-2012	112,718,254	73,325,883	108,987,379	295,031,516
2012-2013	113,457,745	73,800,305	111,635,279	298,893,329
2013-2014	114,202,087	74,277,797	114,347,511	302,827,395
2014-2015	114,951,313	74,758,378	117,125,638	306,835,328
2015-2016	115,705,454	75,242,068	119,971,261	310,918,783
2016-2017	116,464,543	75,728,888	122,886,019	315,079,450
2017-2018	117,228,611	76,218,857	125,871,593	319,319,062
2018-2019	117,997,693	76,711,997	128,929,703	323,639,393
2019-2020	118,771,819	77,208,327	132,062,112	328,042,258
2020-2021	119,551,025	77,707,869	135,270,623	332,529,517
Total (2001/02 to 2020/21)	**2,245,171,731**	**1,458,017,136**	**2,163,190,365**	**5,866,379,233**

At the 2 per cent discount rate the total Saskatchewan costs for policing would be $6,418,668,756 ($2,452,562,957 municipal, $1,592,899,829 provincial, and $2,373,205,970 federal). At the 4 per cent discount rate the total Saskatchewan costs for policing would be $5,373,711,521 ($2,060,090,439 municipal, $1,337,643,566 provincial, and $1,975,977,516 federal).

The Aboriginal proportion of the costs of policing in Saskatchewan is recorded in Table 6.

Table 6- The Projected Cost of Policing in Saskatchewan (Aboriginal) by Jurisdiction (2001 to 2021) at a 3 Per Cent Discount Rate

	Municipal Gov Exp	Provincial Gov Exp	Federal Gov Exp	Total Policing Costs all Gov
2000-2001	51,250,160	32,775,600	34,893,040	118,918,800
2001-2002	53,574,999	33,542,918	39,065,049	126,182,965
2002-2003	56,352,365	36,688,213	46,561,383	139,601,962
2003-2004	57,339,162	37,327,311	48,211,476	142,877,949
2004-2005	58,335,445	37,972,470	49,913,378	146,221,293
2005-2006	59,341,125	38,623,628	51,668,467	149,633,221
2006-2007	60,356,111	39,280,725	53,478,154	153,114,990
2007-2008	61,380,307	39,943,698	55,343,876	156,667,881
2008-2009	62,413,617	40,612,481	57,267,105	160,293,204
2009-2010	63,455,944	41,287,011	59,249,344	163,992,299
2010-2011	64,507,186	41,967,219	61,292,127	167,766,532
2011-2012	65,567,242	42,653,038	63,397,024	171,617,304
2012-2013	66,636,008	43,344,399	65,565,637	175,546,044
2013-2014	67,713,379	44,041,232	67,799,604	179,554,214
2014-2015	68,799,248	44,743,466	70,100,598	183,643,312
2015-2016	69,893,508	45,451,030	72,470,329	187,814,867
2016-2017	70,996,051	46,163,853	74,910,543	192,070,447
2017-2018	72,106,768	46,881,861	77,423,026	196,411,655
2018-2019	73,225,549	47,604,983	80,009,601	200,840,133
2019-2020	74,352,284	48,333,144	82,672,133	205,357,561
2020-2021	75,486,862	49,066,273	85,412,525	209,965,660
Total (2001/02 to 2020/21)	1,301,833,162	845,528,952	1,261,811,378	3,409,173,492

At the 2 per cent discount rate the total Saskatchewan costs for policing would be $3,741,646,007 ($1,426,544,106 municipal, $926,636,974 provincial, and $1,388,464,926 federal). At the 4 per cent discount rate the total Saskatchewan costs for policing would be $3,113,088,064 ($1,190,728,501 municipal, $773,269,606 provincial, and $1,149,089,957 federal).

Figure 40 presents the projected Aboriginal policing costs as a proportion of the total policing costs (including all jurisdictions combined). Figures 41 and 42 project the Aboriginal participation rates (2001 to 2021), based on the calculations presented in Table 7. The calculations used to create the participation rate projections (and associated costs) are based on the assumption that the participation rate of Aboriginal individuals involved in criminal activity during 2000 to 2001 period (52 per cent) is equal to the proportional costs of Aboriginal involvement in policing (starting at 52 per cent of the total costs 2000-01).

Table 7-Projected Growth Rate of Aboriginal and Non-Aboriginal Participation in Policing Sector in Saskatchewan

	Total Number of Individuals Accused of Criminal Activity	Number of Aboriginals Accused of Criminal Activity	% of Abor Participation Accused of Criminal Activity	% of Non-Abor Participation Accused of Criminal Activity
2000-2001	18250	9490	52.00%	48.00%
2001-2002	18350	9624	52.45%	47.55%
2002-2003	18576	9850	53.02%	46.98%
2003-2004	18807	10081	53.60%	46.40%
2004-2005	19043	10317	54.18%	45.82%
2005-2006	19285	10559	54.75%	45.25%
2006-2007	19532	10806	55.33%	44.67%
2007-2008	19786	11060	55.90%	44.10%
2008-2009	20045	11319	56.47%	43.53%
2009-2010	20311	11585	57.04%	42.96%
2010-2011	20582	11856	57.60%	42.40%
2011-2012	20860	12134	58.17%	41.83%
2012-2013	21145	12419	58.73%	41.27%
2013-2014	21436	12710	59.29%	40.71%
2014-2015	21734	13008	59.85%	40.15%
2015-2016	22039	13313	60.41%	39.59%
2016-2017	22351	13625	60.96%	39.04%
2017-2018	22671	13945	61.51%	38.49%
2018-2019	22998	14272	62.06%	37.94%
2019-2020	23332	14606	62.60%	37.40%
2020-2021	23675	14949	63.14%	36.86%
Average	20828	12102	57.85%	42.15%

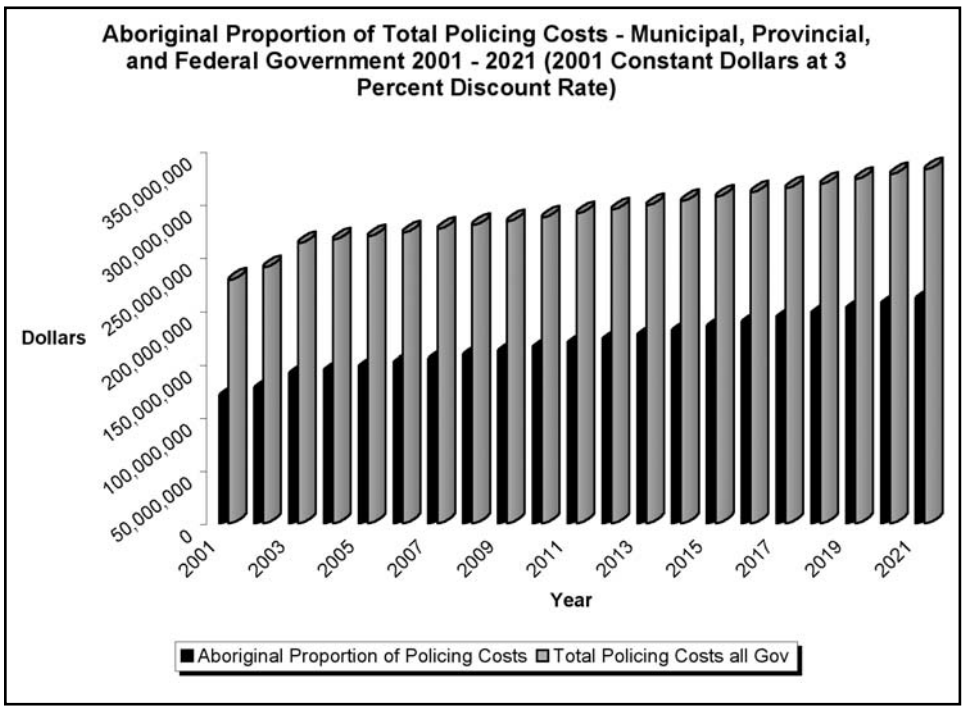


Figure 40

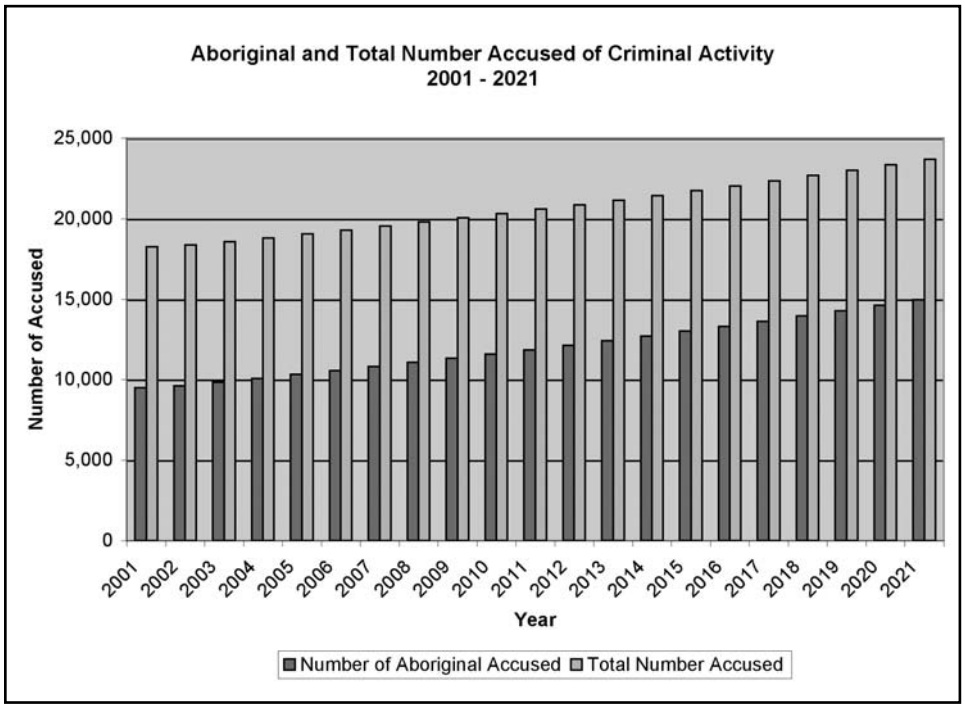


Figure 41

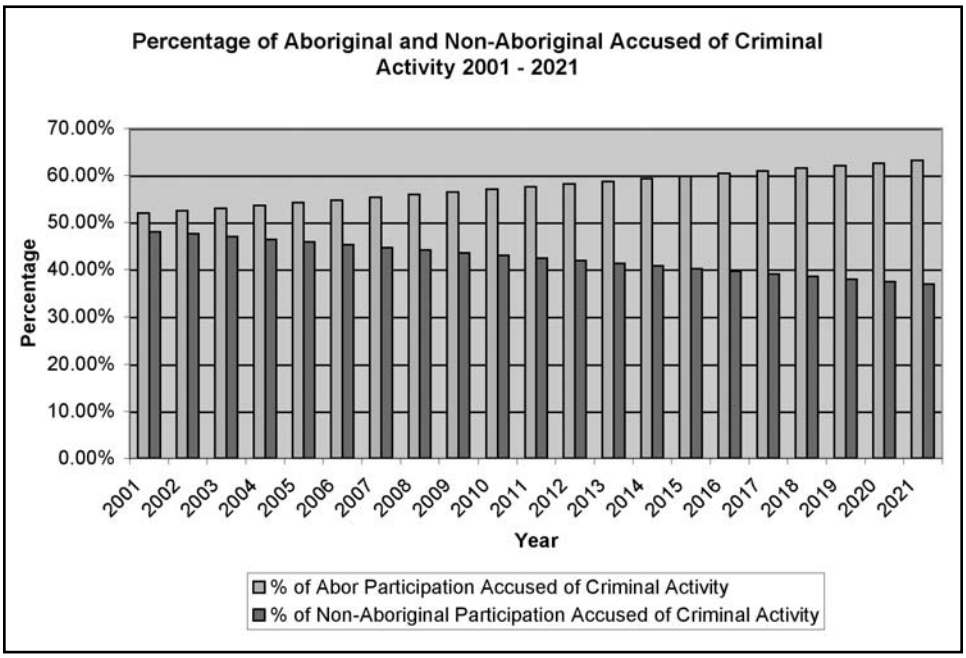


Figure 42

5.7.2 Prosecutions, Courts, and Legal Aid

In Saskatchewan, the cost of the justice sectors of prosecutions, courts, and legal aid has risen consistently over the nine years beginning 1992-93 and ending 2000-01 (see Table 8 for 1996-2001).

Table 8-The Historical Cost of Prosecutions, Courts, and Legal Aid in Saskatchewan (1996/97 to 2000/01)

	Court Costs	Prosecution Costs	Legal Aid Costs
96-97	26,494,000	7,136,500	8,909,000
97-98			9,560,000
98-99	38,073,000		10,111,000
99-00			10,250,000
00-01	40,880,000	10,220,000	11,242,000

Based on these historical cost figures for the justice sectors of prosecutions, courts, and legal aid in Saskatchewan, Table 9 presents the projections across the three cost areas for Saskatchewan. Table 10 presents the projected Aboriginal proportion of cost of courts, prosecution, and legal aid in Saskatchewan (2001 to 2021) at a 3 per cent discount rate.

Table 9-The Projected Cost of Courts, Prosecution, and Legal Aid in Saskatchewan (2001 to 2021) at a 3 Per Cent Discount Rate

	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2001	40,880,000	10,220,000	11,242,000	62,342,000
2002	41,133,778	10,873,413	11,577,828	63,585,019
2003	41,389,132	11,568,601	11,923,687	64,881,421
2004	41,646,072	12,308,237	12,279,878	66,234,187
2005	41,904,606	13,095,160	12,646,710	67,646,476
2006	42,164,745	13,932,396	13,024,500	69,121,640
2007	42,426,499	14,823,160	13,413,575	70,663,234
2008	42,689,878	15,770,874	13,814,273	72,275,025
2009	42,954,892	16,779,181	14,226,941	73,961,014
2010	43,221,551	17,851,953	14,651,937	75,725,440
2011	43,489,866	18,993,312	15,089,628	77,572,806
2012	43,759,846	20,207,645	15,540,394	79,507,884
2013	44,031,502	21,499,615	16,004,625	81,535,742
2014	44,304,845	22,874,186	16,482,725	83,661,756
2015	44,579,884	24,336,641	16,975,106	85,891,632
2016	44,856,631	25,892,598	17,482,196	88,231,425
2017	45,135,096	27,548,033	18,004,435	90,687,564
2018	45,415,290	29,309,309	18,542,273	93,266,872
2019	45,697,223	31,183,192	19,096,179	95,976,594
2020	45,980,906	33,176,880	19,666,631	98,824,417
2021	46,266,350	35,298,035	20,254,124	101,818,509

Table 10-The Projected Aboriginal Proportion of Cost of Courts, Prosecution, and Legal Aid in Saskatchewan (2001 to 2021) at a 3 Per Cent Discount Rate

	Court Costs	Costs	Costs	Total
2001	21,257,600	5,314,400	5,845,840	32,417,840
2002	21,573,378	5,702,764	6,072,208	33,348,350
2003	21,946,399	6,134,198	6,322,481	34,403,078
2004	22,322,883	6,597,389	6,582,188	35,502,461
2005	22,702,793	7,094,607	6,851,649	36,649,049
2006	23,086,089	7,628,281	7,131,189	37,845,560
2007	23,472,733	8,201,008	7,421,147	39,094,888
2008	23,862,684	8,815,565	7,721,869	40,400,118
2009	24,255,901	9,474,920	8,033,713	41,764,534
2010	24,652,343	10,182,246	8,357,048	43,191,636
2011	25,051,966	10,940,935	8,692,251	44,685,152
2012	25,454,727	11,754,614	9,039,714	46,249,055
2013	25,860,584	12,627,155	9,399,837	47,887,576
2014	26,269,491	13,562,698	9,773,035	49,605,224
2015	26,681,405	14,565,668	10,159,732	51,406,804
2016	27,096,279	15,640,788	10,560,367	53,297,434
2017	27,514,070	16,793,108	10,975,390	55,282,568
2018	27,934,731	18,028,018	11,405,265	57,368,015
2019	28,358,217	19,351,280	11,850,471	59,559,968
2020	28,784,483	20,769,041	12,311,497	61,865,021
2021	29,213,481	22,287,872	12,788,851	64,290,204

Figure 43 presents the projected Aboriginal court, prosecution, and legal aid costs as a proportion of the total court, prosecution, and legal aid costs.

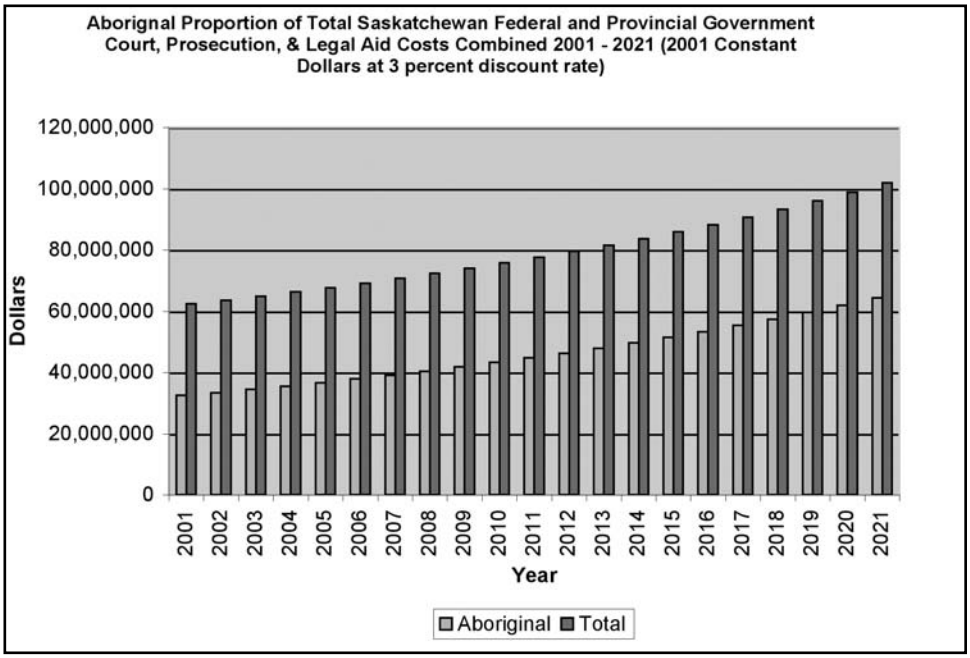


Figure 43

5.7.3 Provincial Corrections

For corrections across Canada, according to Taylor-Butts (2002), the Canadian governments spent a total of approximately $11.14 billion on the five sectors of justice in 2000-2001, including $2,454 million on adult corrections (provincial and federal). Correctional costs associated with youth offenders (a provincial responsibility) are not included in the Taylor-Butts (2002) analysis. In Saskatchewan, the historical costs associated with adult and youth offenders in provincial corrections are presented in the following tables.

Table 11-Cost of Adult Offenders: Saskatchewan Provincial Corrections

Year	Institutions	CTR	Community Supervision Services	Headquarters/ Other	Total
1998-1999	$35,355,561	$2,206,389	--	--	$37,561,950
1999-2000	$40,145,691	$2,233,621	$7,241,000	$1,491,000	$42,379,312
2000-2001	$43,364,726	$2,409,983	$7,655,000	$1,596,000	$45,774,709
2001-2002	$44,918,671	$2,584,779	$8,148,000	$1,769,000	$47,503,450
2002-2003	$46,999,935	$2,654,424	--	--	$49,654,359

Sources: Canadian Centre for Justice Statistics (CCJS). (2003). *Adult Correctional Services in Canada, 2001-2002*. Ottawa: Minister of Industry **and** McIlmoyl (2003a).

Table 12-Cost of Young Offenders: Saskatchewan Provincial Corrections

Year	Secure Custody	Open Custody	Total
1998-1999	$17,123,599	$3,554,435	$20,678,034
1999-2000	$18,148,963	$4,090,269	$22,239,232
2000-2001	$20,345,669	$4,225,959	$24,571,628
2001-2002	$21,029,176	$4,674,694	$25,703,870
2002-2003	$21,668,400	$4,795,680	$26,464,080

Sources: Canadian Centre for Justice Statistics (CCJS). (2003). *Adult Correctional Services in Canada, 2001-2002*. Ottawa: Minister of Industry **and** McIlmoyl (2003a).

Based on average daily custody counts, tables 13 and 14 present the participation rates for adult and youth offenders in Saskatchewan's provincial correctional facilities.

Table 13-Adult Offender Participation Rates: Saskatchewan Provincial Corrections

Year	Institutions	CTR	Remand	Total
1998-1999	889	69	245	1203
1999-2000	787	69	287	1143
2000-2001	754	76	300	1130
2001-2002	766	73	303	1142
2002-2003	794	73	346	1213
Average	798	72	296	1166

Sources: Canadian Centre for Justice Statistics (CCJS). (2003). *Adult Correctional Services in Canada, 2001-2002*. Ottawa: Minister of Industry **and** McIlmoyl (2003a).

Table 14-Youth Offender Participation Rates: Saskatchewan Provincial Corrections

Year	Secure	Open	Remand	Total
1998-1999	187	135	75	397
1999-2000	162	121	69	352
2000-2001	161	101	79	341
2001-2002	138	102	95	335
2002-2003	145	113	73	331
Average	159	114	78	351

Sources: Canadian Centre for Justice Statistics (CCJS). (2003). *Adult Correctional Services in Canada, 2001-2002*. Ottawa: Minister of Industry **and** McIlmoyl (2003a).

Based on average daily custody counts, tables 15 and 16 present the percentage of Aboriginal offenders (adult and youth) in Saskatchewan's provincial correctional facilities.

Table 15-Percentage of Adult Aboriginal Offenders: Saskatchewan Provincial Corrections

Year	Institutions	CTR	Remand
1998-1999	80%	78%	81%
1999-2000	79%	83%	80%
2000-2001	79%	84%	80%
2001-2002	80%	79%	80%
2002-2003	81%	80%	80%
Average	80%	81%	80%

Sources: Canadian Centre for Justice Statistics (CCJS). (2003). *Adult Correctional Services in Canada, 2001-2002*. Ottawa: Minister of Industry **and** McIlmoyl (2003a).

Table 16-Percentage of Youth Aboriginal Offenders: Saskatchewan Provincial Corrections

Year	Secure	Open	Remand
1998-1999	78%	74%	76%
1999-2000	77%	72%	75%
2000-2001	80%	76%	78%
2001-2002	78%	79%	78%
2002-2003	78%	77%	78%
Average	78%	76%	77%

Sources: Canadian Centre for Justice Statistics (CCJS). (2003). *Adult Correctional Services in Canada, 2001-2002*. Ottawa: Minister of Industry **and** McIlmoyl (2003a).

Tables 17 and 18 present the forecast costs for adult and youth offenders in the Saskatchewan provincial corrections system. At a 3 per cent rate of inflation, it is projected that costs will almost double over the projected 20-year period (2002-2021). Tables 19 and 20 present the Aboriginal proportion of the total costs (base and projected) presented in tables 17 and 18. In the base year (2000-2001) the Aboriginal adult proportion of the total provincial adult costs was approximately 80 per cent ($44.028 million over $55.025 million). The Aboriginal adult proportion of the total adult cost is projected to rise to approximately 86 per cent in 2021 ($80.825 million over $94.176 million). In the base year (2000-2001) the Aboriginal youth proportion of the total provincial adult costs was approximately 78 per cent ($18.758 million over $24.571 million). The Aboriginal youth proportion of the total adult cost is projected to rise to over 80 per cent in 2021 ($35.060 million over $43.589 million).

Table 17-Provincial Corrections: Projections (2002 – 2021) of the Cost of Adult Offender Participation. Based on Constant 2001 Dollars (at 3 per cent discount rate) & Average Offender Numbers from (1998 - 2003)

	Institutions	CTR	Community Supervision Services	Headquarters / Central Services	Sub Total
2000-2001 (base)	**$43,364,726**	**$2,409,983**	**$7,655,000**	**$1,596,000**	**$55,025,709**
2001-2002	$44,918,671	$2,584,779	$8,148,000	$1,769,000	$57,420,450
2002-2003	$46,203,345	$2,604,682	$8,239,258	$1,819,682	$58,866,966
2003-2004	$47,524,761	$2,679,176	$8,331,537	$1,871,816	$60,407,289
2004-2005	$48,883,969	$2,755,800	$8,424,851	$1,925,443	$61,990,063
2005-2006	$50,282,050	$2,834,616	$8,519,209	$1,980,607	$63,616,482
2006-2007	$51,720,117	$2,915,686	$8,614,624	$2,037,352	$65,287,779
2007-2008	$53,199,312	$2,999,075	$8,711,108	$2,095,722	$67,005,216
2008-2009	$54,720,813	$3,084,848	$8,808,672	$2,155,764	$68,770,097
2009-2010	$56,285,828	$3,173,075	$8,907,329	$2,217,527	$70,583,759
2010-2011	$57,895,603	$3,263,825	$9,007,091	$2,281,059	$72,447,578
2011-2012	$59,551,417	$3,357,170	$9,107,971	$2,346,411	$74,362,969
2012-2013	$61,254,587	$3,453,185	$9,209,980	$2,413,636	$76,331,389
2013-2014	$63,006,469	$3,551,946	$9,313,132	$2,482,787	$78,354,333
2014-2015	$64,808,454	$3,653,532	$9,417,439	$2,553,918	$80,433,343
2015-2016	$66,661,975	$3,758,023	$9,522,914	$2,627,088	$82,570,001
2016-2017	$68,568,508	$3,865,502	$9,629,571	$2,702,354	$84,765,935
2017-2018	$70,529,567	$3,976,056	$9,737,422	$2,779,777	$87,022,822
2018-2019	$72,546,713	$4,089,771	$9,846,481	$2,859,417	$89,342,382
2019-2020	$74,621,549	$4,206,738	$9,956,762	$2,941,340	$91,726,389
2020-2021	$76,755,725	$4,327,051	$10,068,278	$3,025,609	$94,176,663
Totals	**$1,189,939,431**	**$67,134,537**	**$181,521,628**	**$46,886,309**	**$1,485,481,905**

Table 18- Provincial Corrections: Projections (2002 – 2021) of the Cost of Youth Offender Participation. Based on Constant 2001 Dollars (at 3 per cent discount rate) & Average Offender Numbers from (1998 - 2003). Includes TOTAL Adult and Youth Offender Costs

Year	Secure	Open	Youth	Youth Offender
2000-2001 (base)	**$20,345,669**	**$4,225,959**	**$24,571,628**	**$55,025,709**
2001-2002	$21,029,176	$4,674,694	$25,703,870	$83,124,320
2002-2003	$21,416,113	$4,822,882	$26,238,995	$85,105,961
2003-2004	$21,810,169	$4,975,767	$26,989,430	$87,396,719
2004-2005	$22,211,476	$5,133,499	$27,761,328	$89,751,390
2005-2006	$22,620,168	$5,296,231	$28,555,302	$92,171,784
2006-2007	$23,036,379	$5,464,121	$29,371,983	$94,659,762
2007-2008	$23,460,248	$5,637,334	$30,212,022	$97,217,238
2008-2009	$23,891,917	$5,816,038	$31,076,086	$99,846,183
2009-2010	$24,331,528	$6,000,406	$31,964,862	$102,548,621
2010-2011	$24,779,228	$6,190,619	$32,879,057	$105,326,634
2011-2012	$25,235,166	$6,386,861	$33,819,398	$108,182,367
2012-2013	$25,699,493	$6,589,325	$34,786,633	$111,118,021
2013-2014	$26,172,364	$6,798,207	$35,781,530	$114,135,864
2014-2015	$26,653,935	$7,013,710	$36,804,882	$117,238,225
2015-2016	$27,144,367	$7,236,044	$37,857,502	$120,427,502
2016-2017	$27,643,824	$7,465,427	$38,940,226	$123,706,162
2017-2018	$28,152,470	$7,702,081	$40,053,917	$127,076,738
2018-2019	$28,670,476	$7,946,237	$41,199,459	$130,541,841
2019-2020	$29,198,012	$8,198,133	$42,377,763	$134,104,152
2020-2021	$29,735,256	$8,458,013	$43,589,767	$137,766,430
Totals	**$502,891,763**	**$127,805,628**	**$675,964,010**	**$2,161,445,915**

Table 19-Provincial Corrections: Projections (2002 – 2021) of the Cost of Aboriginal Adult Offender Participation. Based on Constant 2001 Dollars (at 3 per cent discount rate) & Average Offender Numbers from (1998 - 2003)

Year	Institutions	CTR	Community Supervision Services	Headquarters / Central Services	Total Costs: Adult Aboriginal Participation	Total Costs: Adult including Aboriginal Adults
2000-2001	**$34,624,744**	**$1,936,327**	**$6,185,240**	**$1,281,950**	$44,028,262	$55,025,709
2001-2002	$35,865,498	$2,088,501	$6,544,694	$1,420,909	$45,919,602	$57,420,450
2002-2003	$36,891,251	$2,104,583	$6,617,995	$1,461,618	$47,075,447	$58,866,966
2003-2004	$38,122,370	$2,174,338	$6,722,417	$1,510,301	$48,529,427	$60,407,289
2004-2005	$39,391,215	$2,246,221	$6,827,916	$1,560,475	$50,025,827	$61,990,063
2005-2006	$40,698,870	$2,320,293	$6,934,499	$1,612,182	$51,565,845	$63,616,482
2006-2007	$42,046,451	$2,396,616	$7,042,173	$1,665,468	$53,150,708	$65,287,779
2007-2008	$43,435,104	$2,475,255	$7,150,946	$1,720,377	$54,781,681	$67,005,216
2008-2009	$44,866,007	$2,556,276	$7,260,825	$1,776,956	$56,460,064	$68,770,097
2009-2010	$46,340,374	$2,639,748	$7,371,820	$1,835,254	$58,187,195	$70,583,759
2010-2011	$47,859,450	$2,725,741	$7,483,938	$1,895,318	$59,964,447	$72,447,578
2011-2012	$49,424,519	$2,814,327	$7,597,188	$1,957,201	$61,793,234	$74,362,969
2012-2013	$51,036,898	$2,905,580	$7,711,578	$2,020,954	$63,675,010	$76,331,389
2013-2014	$52,697,943	$2,999,578	$7,827,119	$2,086,631	$65,611,270	$78,354,333
2014-2015	$54,409,049	$3,096,398	$7,943,818	$2,154,287	$67,603,551	$80,433,343
2015-2016	$56,171,650	$3,196,121	$8,061,686	$2,223,979	$69,653,436	$82,570,001
2016-2017	$57,987,220	$3,298,830	$8,180,733	$2,295,766	$71,762,548	$84,765,935
2017-2018	$59,857,276	$3,404,611	$8,300,967	$2,369,707	$73,932,562	$87,022,822
2018-2019	$61,783,379	$3,513,552	$8,422,400	$2,445,864	$76,165,196	$89,342,382
2019-2020	$63,767,132	$3,625,743	$8,545,042	$2,524,302	$78,462,219	$91,726,389
2020-2021	$65,810,186	$3,741,277	$8,668,902	$2,605,084	$80,825,450	$94,176,663
Total	**$ 988,461,841**	**$56,323,590**	**$151,216,655**	**$39,142,631**	**$1,235,144,717**	**$1,485,481,905**

Table 20-Provincial Corrections: Projections (2002 – 2021) of the Cost of Aboriginal Youth Offender Participation. Based on Constant 2001 Dollars (at 3 per cent discount rate) & Average Offender Numbers from (1998 - 2003)

Year	Secure	Open	Total Costs: Aboriginal Youth	Total Costs: Young Offenders including Aboriginal Youth
2000-2001	**$15,910,313**	**$2,848,533**	**$18,758,846**	**$24,571,628**
2001-2002	$16,444,816	$3,151,005	$19,595,821	$25,703,870
2002-2003	$16,747,400	$3,601,479	$20,348,879	$26,238,995
2003-2004	$17,262,460	$3,715,998	$20,978,457	$26,989,430
2004-2005	$17,793,079	$3,831,494	$21,624,573	$27,761,328
2005-2006	$18,339,723	$3,950,511	$22,290,234	$28,555,302
2006-2007	$18,902,865	$4,073,155	$22,976,021	$29,371,983
2007-2008	$19,482,999	$4,199,535	$23,682,534	$30,212,022
2008-2009	$20,080,627	$4,329,761	$24,410,389	$31,076,086
2009-2010	$20,696,271	$4,463,950	$25,160,221	$31,964,862
2010-2011	$21,330,465	$4,602,220	$25,932,684	$32,879,057
2011-2012	$21,983,759	$4,744,692	$26,728,451	$33,819,398
2012-2013	$22,656,721	$4,891,493	$27,548,214	$34,786,633
2013-2014	$23,349,934	$5,042,752	$28,392,686	$35,781,530
2014-2015	$24,063,999	$5,198,602	$29,262,601	$36,804,882
2015-2016	$24,799,534	$5,359,180	$30,158,714	$37,857,502
2016-2017	$25,557,175	$5,524,627	$31,081,803	$38,940,226
2017-2018	$26,337,578	$5,695,089	$32,032,667	$40,053,917
2018-2019	$27,141,416	$5,870,715	$33,012,131	$41,199,459
2019-2020	$27,969,383	$6,051,659	$34,021,043	$42,377,763
2020-2021	$28,822,194	$6,238,080	$35,060,274	$43,589,767
Total	**$439,762,399**	**$94,535,998**	**$534,298,397**	**$675,964,010**

5.7.4 Federal Corrections

The cost of operating the federal correction system in Saskatchewan is rising. The Aboriginal proportion of the total costs are representative of the "over-representation" of Aboriginal peoples in federal corrections in the province. Table 21 presents the historical costs of federal corrections in Saskatchewan (1993-94 to 2001-02). Table 22 shows the average daily costs per individual in the federal corrections system, including the costs for Community Correctional Centres (CCC), the federal corrections term for a halfway house that is owned and operated by the Government of Canada that accommodates federal offenders on conditional release who require a place to live and who have a residency condition attached to their release. The cost/participation breakdown is tabulated on Table 23.

Table 21-Historical Costs for Federal Corrections in Saskatchewan, 1993-94 to 2001-02

	Maximum	Medium	Minimum	Women	CCC	Parole
1993-94	$65,371	$40,008	$39,171	$78,221	$27,001	$8,527
1994-95	$62,305	$41,023	$41,894	$75,771	$30,255	$8,550
1995-96	$68,156	$43,399	$45,170	$74,965	$32,811	$9,145
1996-97	$70,771	$43,422	$45,362	$73,061	$32,795	$10,178
1997-98	$77,556	$47,370	$45,359	$109,870	$26,366	$12,021
1998-99	$87,135	$52,688	$46,988	$113,610	$29,522	$13,114
1999-2000	$96,740	$60,673	$53,634	$115,465	$29,921	$14,534
2000-01	$98,904	$63,931	$57,912	$132,475	$33,799	$15,903
2001-02	$108,277	$71,894	$69,178	$155,589	$41,583	$17,520

Table 22-Average Daily Costs Per Individual in the Federal Corrections System

	Maximum	Medium	Minimum	Women	CCC	Parole
1993-94	$179.10	$109.61	$107.32	$214.30	$73.98	$23.36
1994-95	$170.70	$112.39	$114.78	$207.59	$82.89	$23.42
1995-96	$186.73	$118.90	$123.75	$205.38	$89.89	$25.05
1996-97	$193.89	$118.96	$124.28	$200.17	$89.85	$27.88
1997-98	$212.48	$129.78	$124.27	$301.01	$72.24	$32.93
1998-99	$238.73	$144.35	$128.73	$311.26	$80.88	$35.93
1999-2000	$265.04	$166.23	$146.94	$316.34	$81.98	$39.82
2000-01	$270.97	$175.15	$158.66	$362.95	$92.60	$43.57
2001-02	$296.65	$196.97	$189.53	$426.27	$113.93	$48.00

Table 23-Cost and Participation Breakdown: Federal Corrections in Saskatchewan

	Maximum	Medium	Minimum	Women	CCC	Parole
2000-01	$98,904	$63,931	$57,912	$132,475	$33,799	$15,903
2001-02	$108,277	$71,894	$69,178	$155,589	$41,583	$17,520
Average number of individuals	241	436	99	27	261	180
Total Costs 2000-2001	$23,835,864	$27,873,916	$5,733,288	$3,576,825	$8,821,539	$2,862,540
Total Costs 2001-2002	$26,094,757	$31,345,784	$6,848,622	$4,200,903	$10,853,163	$3,153,600
Aboriginal	142	282	47	20	147	109
Non-Aboriginal	99	154	52	7	114	71
Aboriginal %	58.92%	64.68%	47.47%	74.07%	56.32%	60.56%

Tables 24 and 25 present the total Saskatchewan federal corrections costs. The costs are based on 2001 dollars discounted at a rate of 3 per cent. The projected rate of participation is based on historical participation rate trends for the adult population, aged 18 to 49 years of age. The costs for participation in maximum, medium, minimum, women, CCC, and parole are calculated and projected to 2021.

Table 24-Total Saskatchewan Federal Corrections Costs-based on 2001 dollars-based on Adult Pop (18 - 49) participation rates for Maximum, Medium, Minimum, and Women

	Maximum	Medium	Minimum	Women
2000-2001	$23,835,864	$27,873,916	$5,733,288	$3,576,825
2001-2002	$26,094,757	$31,345,784	$6,848,622	$4,200,903
2002-2003	$26,816,795	$32,514,701	$7,089,923	$4,408,444
2003-2004	$27,558,811	$33,727,209	$7,339,726	$4,626,238
2004-2005	$28,321,359	$34,984,932	$7,598,330	$4,854,791
2005-2006	$29,105,007	$36,289,556	$7,866,046	$5,094,637
2006-2007	$29,910,338	$37,642,832	$8,143,194	$5,346,331
2007-2008	$30,737,952	$39,046,573	$8,430,107	$5,610,460
2008-2009	$31,588,466	$40,502,660	$8,727,129	$5,887,638
2009-2010	$32,462,514	$42,013,047	$9,034,617	$6,178,510
2010-2011	$33,360,746	$43,579,758	$9,352,938	$6,483,752
2011-2012	$34,283,833	$45,204,893	$9,682,475	$6,804,074
2012-2013	$35,232,461	$46,890,630	$10,023,622	$7,140,221
2013-2014	$36,207,338	$48,639,231	$10,376,789	$7,492,975
2014-2015	$37,209,189	$50,453,039	$10,742,400	$7,863,157
2015-2016	$38,238,761	$52,334,486	$11,120,892	$8,251,627
2016-2017	$39,296,822	$54,286,094	$11,512,720	$8,659,289
2017-2018	$40,384,159	$56,310,479	$11,918,354	$9,087,090
2018-2019	$41,501,582	$58,410,356	$12,338,279	$9,536,027
2019-2020	$42,649,924	$60,588,540	$12,773,000	$10,007,143
2020-2021	$43,830,041	$62,847,950	$13,223,037	$10,501,534
Total	**$684,790,853**	**$907,612,749**	**$194,142,201**	**$138,034,841**

Table 25- Total Saskatchewan Federal Corrections Costs-based on 2001 dollars-based on Adult Pop (18 - 49) participation rates for CCC, Parole, Headquarters and Grand Total (Tables 24 and 25)

	CCC	Parole	HQ	Grand Total Tables 24 and 25 combined
2000-2001	$8,821,539	$2,862,540	$3,100,000	$75,803,972
2001-2002	$10,853,163	$3,153,600	$3,280,000	$85,776,829
2002-2003	$11,060,994	$3,321,686	$3,401,386	$88,613,929
2003-2004	$11,272,806	$3,498,731	$3,527,264	$91,550,784
2004-2005	$11,488,673	$3,685,213	$3,657,801	$94,591,098
2005-2006	$11,708,674	$3,881,634	$3,793,168	$97,738,721
2006-2007	$11,932,888	$4,088,524	$3,933,545	$100,997,651
2007-2008	$12,161,395	$4,306,441	$4,079,117	$104,372,046
2008-2009	$12,394,278	$4,535,974	$4,230,077	$107,866,223
2009-2010	$12,631,621	$4,777,740	$4,386,623	$111,484,672
2010-2011	$12,873,509	$5,032,392	$4,548,963	$115,232,058
2011-2012	$13,120,029	$5,300,618	$4,717,310	$119,113,231
2012-2013	$13,371,269	$5,583,139	$4,891,888	$123,133,232
2013-2014	$13,627,321	$5,880,719	$5,072,927	$127,297,300
2014-2015	$13,888,276	$6,194,160	$5,260,665	$131,610,886
2015-2016	$14,154,228	$6,524,308	$5,455,351	$136,079,653
2016-2017	$14,425,272	$6,872,052	$5,657,242	$140,709,491
2017-2018	$14,701,507	$7,238,330	$5,866,605	$145,506,524
2018-2019	$14,983,032	$7,624,132	$6,083,715	$150,477,124
2019-2020	$15,269,948	$8,030,496	$6,308,861	$155,627,912
2020-2021	$15,562,358	$8,458,520	$6,542,338	$160,965,778
Total	**$261,481,242**	**$107,988,408**	**$94,694,847**	**$2,388,745,141**

Table 26 & 27 present the Aboriginal proportion of total Saskatchewan federal corrections costs The costs are based on 2001 dollars discounted at a rate of 3 per cent. The projected rate of Aboriginal participation is based on projected growth rates for the adult Aboriginal population, aged 18 to 49 years of age. The proportional costs for Aboriginal participation in maximum, medium, minimum, CCC, parole and for women are calculated and projected to 2021.

Table 26- Aboriginal Proportion of Total Saskatchewan Federal Corrections Costs-based on 2001 dollars-based on Adult Pop (18 - 49) participation rates for Maximum, Medium, Minimum, and Women

	Maximum	Medium	Minimum	Women
2000-2001	14,044,368	18,028,542	2,721,864	2,649,500
2001-2002	15,375,334	20,274,108	3,251,366	3,111,780
2002-2003	15,950,585	21,201,376	3,406,839	3,284,987
2003-2004	16,545,226	22,168,364	3,569,269	3,467,483
2004-2005	17,159,832	23,176,662	3,738,944	3,659,749
2005-2006	17,794,995	24,227,923	3,916,161	3,862,293
2006-2007	18,451,323	25,323,860	4,101,230	4,075,647
2007-2008	19,129,439	26,466,255	4,294,469	4,300,369
2008-2009	19,829,983	27,656,952	4,496,213	4,537,048
2009-2010	20,553,612	28,897,870	4,706,805	4,786,300
2010-2011	21,301,001	30,190,997	4,926,603	5,048,774
2011-2012	22,072,841	31,538,398	5,155,977	5,325,150
2012-2013	22,869,842	32,942,215	5,395,312	5,616,145
2013-2014	23,692,734	34,404,671	5,645,006	5,922,508
2014-2015	24,542,266	35,928,072	5,905,471	6,245,031
2015-2016	25,419,204	37,514,813	6,177,137	6,584,542
2016-2017	26,324,338	39,167,378	6,460,447	6,941,911
2017-2018	27,258,478	40,888,343	6,755,860	7,318,053
2018-2019	28,222,453	42,680,385	7,063,854	7,713,929
2019-2020	29,217,117	44,546,278	7,384,921	8,130,549
2020-2021	30,243,345	46,488,901	7,719,575	8,568,971
Total	**441,953,947**	**635,683,821**	**104,071,457**	**108,501,220**

Table 27- Aboriginal Proportion of Total Saskatchewan Federal Corrections Costs-based on 2001 dollars-based on Adult Pop (18 - 49) participation rates for CCC, Parole, and Headquarter Costs and Grand Total Tables 26 and 27

	CCC	Parole	HQ	Grand Total Tables 26 and 27 combined
2000-2001	4,968,453	1,733,427	1,870,469	46,016,623
2001-2002	6,112,701	1,909,680	1,979,077	52,014,046
2002-2003	6,292,600	2,029,772	2,071,130	54,237,289
2003-2004	6,476,943	2,157,142	2,167,465	56,551,891
2004-2005	6,665,815	2,292,214	2,268,281	58,961,496
2005-2006	6,859,300	2,435,438	2,373,786	61,469,895
2006-2007	7,057,486	2,587,287	2,484,198	64,081,030
2007-2008	7,260,459	2,748,262	2,599,746	66,798,999
2008-2009	7,468,308	2,918,892	2,720,669	69,628,065
2009-2010	7,681,123	3,099,735	2,847,216	72,572,662
2010-2011	7,898,995	3,291,382	2,979,649	75,637,401
2011-2012	8,122,017	3,494,454	3,118,242	78,827,080
2012-2013	8,350,282	3,709,610	3,263,282	82,146,687
2013-2014	8,583,885	3,937,543	3,415,068	85,601,415
2014-2015	8,822,923	4,178,987	3,573,913	89,196,663
2015-2016	9,067,494	4,434,714	3,740,148	92,938,052
2016-2017	9,317,696	4,705,543	3,914,114	96,831,426
2017-2018	9,573,631	4,992,335	4,096,172	100,882,871
2018-2019	9,835,400	5,295,999	4,286,698	105,098,718
2019-2020	10,103,107	5,617,497	4,486,086	109,485,555
2020-2021	10,376,859	5,957,841	4,694,749	114,050,240
Total	**161,927,022**	**71,794,324**	**63,079,690**	**1,523,931,791**

5.7.5 Overall Participation and Cost Projections

Based on historical data from Statistics Canada, the Canadian Centre for Justice Statistics, and Saskatchewan Justice and Corrections and Public Safety, the dollar figure costs associated with justice participation in all areas of provincial responsibility for the administration of justice (federal, provincial, and municipal) are rising. Assuming the smallest inflation rate of 2 per cent on a constant 2001 dollar (and therefore the least change in the value of the dollar over time), the worst case scenario projected for total costs for the total Saskatchewan population over twenty years is $13 billion. In the 20th year (2021), the cost is projected to be close to $880 million—double the 2000-2001 costs of over $446 million (the base year for calculations but not included in the twenty-year total). The best case scenario (with a discount rate of 4 per cent) is a total cost of close to $11 billion over 20 years; year 20 costs of over $610 million as opposed to over $446 million from 2000-2001. The medium case scenario (with a discount rate of 3 per cent) is a total cost of just over $12 billion over 20 years; year 20 costs of over $733 million as opposed to over $446 million from 2000-2001.

The total cost over twenty years of participation by Aboriginal peoples on a 2 per cent inflation rate on a constant 2001 dollar is over $8.5 billion with a cost of almost $605 million in the 20th year—a rise of almost 233 per cent over the 2000-2001 figure of more than $260 million. The best case scenario for the total cost

over twenty years (4 per cent discount rate) is close to $7 billion with a cost of over 419 million in year 20 (an increase of 161 per cent). The medium case scenario for the total cost over twenty years of participation by Aboriginal peoples (3 per cent discount rate) is close to $7.7 billion with a cost of over 504 million in year 20.

At the nominal rate (zero inflation), the projected total costs for the total Saskatchewan population over twenty years is just over $16 billion. In the 20th year (2021), the cost is projected to be close to $1.2 billion. At the nominal rate, the total cost over twenty years of participation by Aboriginal peoples is close to $9.9 billion with a cost of over 790 million in year 20.

For a review of the projected total justice participation costs for Saskatchewan (total) and the Saskatchewan Aboriginal proportion (at 2 per cent, 3 per cent, and 4 per cent discount rates), see Tables 28 through 33 (below). Figures 44 and 45 present the total cost of Aboriginal participation in Saskatchewan divided by federal and provincial corrections, policing, courts, prosecutions, and legal aid; and compares 2001 base data with the 2021 forecast.

Table 28

Total Cost - Total Saskatchewan Population - based on constant 2001 dollars (2%)

	Prov Adult Corrections	Prov Youth Corrections	Federal Corrections	Total Policing Costs all Gov	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2000-2001	55,025,709	24,571,628	75,803,972	228,690,000	40,880,000	10,220,000	11,242,000	446,433,309
2001-2002	57,420,450	25,703,870	85,776,829	240,592,000	41,542,578	10,975,613	11,690,248	473,701,588
2002-2003	59,441,171	26,496,033	89,471,697	263,278,000	42,215,896	11,787,092	12,156,368	504,846,257
2003-2004	61,590,911	27,518,780	93,331,640	269,189,085	42,900,126	12,658,567	12,641,074	519,830,184
2004-2005	63,820,565	28,581,005	97,364,292	275,251,368	43,595,447	13,594,475	13,145,106	535,352,257
2005-2006	66,133,154	29,684,232	101,577,651	281,469,180	44,302,037	14,599,578	13,669,235	551,435,067
2006-2007	68,531,811	30,830,043	105,980,098	287,846,992	45,020,080	15,678,994	14,214,263	568,102,281
2007-2008	71,019,791	32,020,083	110,580,419	294,389,410	45,749,760	16,838,216	14,781,022	585,378,701
2008-2009	73,600,474	33,256,058	115,387,815	301,101,186	46,491,267	18,083,145	15,370,379	603,290,325
2009-2010	76,277,367	34,539,742	120,411,936	307,987,218	47,244,792	19,420,117	15,983,236	621,864,408
2010-2011	79,054,111	35,872,976	125,662,893	315,052,558	48,010,531	20,855,938	16,620,529	641,129,535
2011-2012	81,934,487	37,257,673	131,151,284	322,302,417	48,788,680	22,397,916	17,283,232	661,115,688
2012-2013	84,922,420	38,695,819	136,888,219	329,742,167	49,579,441	24,053,900	17,972,359	681,854,326
2013-2014	88,021,986	40,189,478	142,885,347	337,377,351	50,383,019	25,832,318	18,688,963	703,378,462
2014-2015	91,237,413	41,740,792	149,154,879	345,213,683	51,199,622	27,742,223	19,434,140	725,722,753
2015-2016	94,573,096	43,351,986	155,709,618	353,257,060	52,029,460	29,793,337	20,209,030	748,923,586
2016-2017	98,033,594	45,025,373	162,562,990	361,513,562	52,872,747	31,996,099	21,014,816	773,019,180
2017-2018	101,623,641	46,763,352	169,729,072	369,989,462	53,729,703	34,361,721	21,852,731	798,049,682
2018-2019	105,348,153	48,568,418	177,222,629	378,691,230	54,600,548	36,902,245	22,724,055	824,057,277
2019-2020	109,212,233	50,443,158	185,059,142	387,625,542	55,485,507	39,630,603	23,630,122	851,086,307
2020-2021	113,221,179	52,390,264	193,254,852	396,799,284	56,384,810	42,560,680	24,572,316	879,183,386
Total	1,645,018,006	748,929,136	2,649,163,302	6,418,668,756	972,126,052	469,762,776	347,653,222	13,251,321,251

Table 29

Aboriginal Proportion of Total Cost - based on constant 2001 dollars (2%)

	Prov Adult Corrections	Prov Youth Corrections	Federal Corrections	Total Policing Costs all Gov	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2000-2001	44,028,262	18,758,846	46,016,623	118,918,800	21,257,600	5,314,400	5,845,840	260,140,371
2001-2002	45,919,602	19,595,821	52,014,046	126,182,965	21,787,781	5,756,365	6,131,169	277,387,749
2002-2003	47,534,643	20,548,235	54,762,091	139,601,962	22,384,787	6,250,052	6,445,859	297,527,628
2003-2004	49,480,327	21,389,931	57,651,516	144,289,157	22,995,075	6,785,171	6,775,794	309,366,971
2004-2005	51,503,058	22,263,076	60,689,444	149,123,818	23,618,845	7,365,122	7,121,666	321,685,029
2005-2006	53,605,817	23,171,495	63,883,352	154,110,327	24,256,302	7,993,578	7,484,195	334,505,066
2006-2007	55,791,701	24,116,598	67,241,094	159,253,198	24,907,648	8,674,504	7,864,132	347,848,875
2007-2008	58,063,926	25,099,853	70,770,914	164,557,077	25,573,090	9,412,185	8,262,260	361,739,305
2008-2009	60,425,832	26,122,787	74,481,470	170,026,750	26,252,833	10,211,246	8,679,393	376,200,310
2009-2010	62,880,886	27,186,986	78,381,852	175,667,144	26,947,085	11,076,682	9,116,383	391,257,017
2010-2011	65,432,689	28,294,099	82,481,608	181,483,335	27,656,056	12,013,885	9,574,114	406,935,786
2011-2012	68,084,979	29,445,843	86,790,762	187,480,554	28,379,957	13,028,676	10,053,508	423,264,279
2012-2013	70,841,641	30,643,999	91,319,842	193,664,185	29,119,000	14,127,337	10,555,527	440,271,531
2013-2014	73,706,705	31,890,422	96,079,904	200,039,779	29,873,399	15,316,651	11,081,171	457,988,031
2014-2015	76,684,358	33,187,040	101,082,560	206,613,053	30,643,369	16,603,935	11,631,483	476,445,797
2015-2016	79,778,948	34,535,854	106,340,005	213,389,900	31,429,127	17,997,084	12,207,549	495,678,467
2016-2017	82,994,990	35,938,949	111,865,048	220,376,389	32,230,894	19,504,620	12,810,499	515,721,389
2017-2018	86,337,171	37,398,490	117,671,142	227,578,780	33,048,888	21,135,733	13,441,512	536,611,717
2018-2019	89,810,361	38,916,729	123,772,418	235,003,521	33,883,333	22,900,339	14,101,813	558,388,515
2019-2020	93,419,614	40,496,005	130,183,722	242,657,261	34,734,453	24,809,133	14,792,680	581,092,868
2020-2021	97,170,180	42,138,752	136,920,646	250,546,851	35,602,475	26,873,648	15,515,442	604,767,995
Total	1,369,467,427	592,380,964	1,764,383,435	3,741,646,007	565,324,395	277,835,947	203,646,149	8,514,684,324

Table 30

Total Cost - Total Saskatchewan Population - based on constant 2001 dollars (3%)

	Prov Adult Corrections	Prov Youth Corrections	Federal Corrections	Total Policing Costs all Gov	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2000-2001	55,025,709	24,571,628	75,803,972	228,690,000	40,880,000	10,220,000	11,242,000	446,433,309
2001-2002	57,420,450	25,703,870	85,776,829	240,592,000	41,133,778	10,873,413	11,577,828	473,078,168
2002-2003	58,866,966	26,238,995	88,613,929	263,278,000	41,389,132	11,568,601	11,923,687	501,879,311
2003-2004	60,407,289	26,989,430	91,550,784	266,556,305	41,646,072	12,308,237	12,279,878	511,737,995
2004-2005	61,990,063	27,761,328	94,591,098	269,893,914	41,904,606	13,095,160	12,646,710	521,882,878
2005-2006	63,616,482	28,555,302	97,738,721	273,292,133	42,164,745	13,932,396	13,024,500	532,324,278
2006-2007	65,287,779	29,371,983	100,997,651	276,752,302	42,426,499	14,823,160	13,413,575	543,072,948
2007-2008	67,005,216	30,212,022	104,372,046	280,275,791	42,689,878	15,770,874	13,814,273	554,140,100
2008-2009	68,770,097	31,076,086	107,866,223	283,864,004	42,954,892	16,779,181	14,226,941	565,537,423
2009-2010	70,583,759	31,964,862	111,484,672	287,518,376	43,221,551	17,851,953	14,651,937	577,277,109
2010-2011	72,447,578	32,879,057	115,232,058	291,240,378	43,489,866	18,993,312	15,089,628	589,371,877
2011-2012	74,362,969	33,819,398	119,113,231	295,031,516	43,759,846	20,207,645	15,540,394	601,834,998
2012-2013	76,331,389	34,786,633	123,133,232	298,893,329	44,031,502	21,499,615	16,004,625	614,680,323
2013-2014	78,354,333	35,781,530	127,297,300	302,827,395	44,304,845	22,874,186	16,482,725	627,922,315
2014-2015	80,433,343	36,804,882	131,610,886	306,835,328	44,579,884	24,336,641	16,975,106	641,576,071
2015-2016	82,570,001	37,857,502	136,079,653	310,918,783	44,856,631	25,892,598	17,482,196	655,657,363
2016-2017	84,765,935	38,940,226	140,709,491	315,079,450	45,135,096	27,548,033	18,004,435	670,182,666
2017-2018	87,022,822	40,053,917	145,506,524	319,319,062	45,415,290	29,309,309	18,542,273	685,169,197
2018-2019	89,342,382	41,199,459	150,477,124	323,639,393	45,697,223	31,183,192	19,096,179	700,634,951
2019-2020	91,726,389	42,377,763	155,627,912	328,042,258	45,980,906	33,176,880	19,666,631	716,598,740
2020-2021	94,176,663	43,589,767	160,965,778	332,529,517	46,266,350	35,298,035	20,254,124	733,080,235
Total	1,485,481,905	675,964,010	2,388,745,141	5,866,379,233	873,048,590	417,322,421	310,697,645	12,017,638,944

Table 31

Aboriginal Proportion of Total Cost - based on constant 2001 dollars (3%)

	Prov Adult Corrections	Prov Youth Corrections	Federal Corrections	Total Policing Costs all Gov	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2000-2001	44,028,262	18,758,846	46,016,623	118,918,800	21,257,600	5,314,400	5,845,840	260,140,371
2001-2002	45,919,602	19,595,821	52,014,046	126,182,965	21,573,378	5,702,764	6,072,208	277,060,784
2002-2003	47,075,447	20,348,879	54,237,289	139,601,962	21,946,399	6,134,198	6,322,481	295,666,655
2003-2004	48,529,427	20,978,457	56,551,891	142,877,949	22,322,883	6,597,389	6,582,188	304,440,185
2004-2005	50,025,827	21,624,573	58,961,496	146,221,293	22,702,793	7,094,607	6,851,649	313,482,238
2005-2006	51,565,845	22,290,234	61,469,895	149,633,221	23,086,089	7,628,281	7,131,189	322,804,755
2006-2007	53,150,708	22,976,021	64,081,030	153,114,990	23,472,733	8,201,008	7,421,147	332,417,636
2007-2008	54,781,681	23,682,534	66,798,999	156,667,881	23,862,684	8,815,565	7,721,869	342,331,212
2008-2009	56,460,064	24,410,389	69,628,065	160,293,204	24,255,901	9,474,920	8,033,713	352,556,256
2009-2010	58,187,195	25,160,221	72,572,662	163,992,299	24,652,343	10,182,246	8,357,048	363,104,012
2010-2011	59,964,447	25,932,684	75,637,401	167,766,532	25,051,966	10,940,935	8,692,251	373,986,217
2011-2012	61,793,234	26,728,451	78,827,080	171,617,304	25,454,727	11,754,614	9,039,714	385,215,123
2012-2013	63,675,010	27,548,214	82,146,687	175,546,044	25,860,584	12,627,155	9,399,837	396,803,531
2013-2014	65,611,270	28,392,686	85,601,415	179,554,214	26,269,491	13,562,698	9,773,035	408,764,810
2014-2015	67,603,551	29,262,601	89,196,663	183,643,312	26,681,405	14,565,668	10,159,732	421,112,932
2015-2016	69,653,436	30,158,714	92,938,052	187,814,867	27,096,279	15,640,788	10,560,367	433,862,503
2016-2017	71,762,548	31,081,803	96,831,426	192,070,447	27,514,070	16,793,108	10,975,390	447,028,792
2017-2018	73,932,562	32,032,667	100,882,871	196,411,655	27,934,731	18,028,018	11,405,265	460,627,770
2018-2019	76,165,196	33,012,131	105,098,718	200,840,133	28,358,217	19,351,280	11,850,471	474,676,145
2019-2020	78,462,219	34,021,043	109,485,555	205,357,561	28,784,483	20,769,041	12,311,497	489,191,398
2020-2021	80,825,450	35,060,274	114,050,240	209,965,660	29,213,481	22,287,872	12,788,851	504,191,827
Total	1,235,144,717	534,298,397	1,587,011,481	3,409,173,492	506,094,638	246,152,155	181,449,901	7,699,324,781

Table 32

Total Cost - Total Saskatchewan Population - based on constant 2001 dollars (4%)

	Prov Adult Corrections	Prov Youth Corrections	Federal Corrections	Total Policing Costs all Gov	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2000-2001	55,025,709	24,571,628	75,803,972	228,690,000	40,880,000	10,220,000	11,242,000	446,433,309
2001-2002	57,420,450	25,703,870	85,776,829	240,592,000	40,724,978	10,771,213	11,465,408	472,454,748
2002-2003	58,292,762	25,981,956	87,756,161	263,278,000	40,570,545	11,352,155	11,693,255	498,924,833
2003-2004	59,235,152	26,465,220	89,787,083	263,923,525	40,416,697	11,964,430	11,925,630	503,717,738
2004-2005	60,194,902	26,957,473	91,871,073	264,589,115	40,263,432	12,609,729	12,162,623	508,648,347
2005-2006	61,172,334	27,458,882	94,009,654	265,275,019	40,110,749	13,289,831	12,404,325	513,720,795
2006-2007	62,167,778	27,969,618	96,204,395	265,981,489	39,958,644	14,006,614	12,650,831	518,939,370
2007-2008	63,181,568	28,489,853	98,456,917	266,708,782	39,807,117	14,762,057	12,902,236	524,308,529
2008-2009	64,214,045	29,019,764	100,768,887	267,457,159	39,656,164	15,558,244	13,158,637	529,832,899
2009-2010	65,265,556	29,559,531	103,142,028	268,226,884	39,505,783	16,397,374	13,420,133	535,517,289
2010-2011	66,336,456	30,109,339	105,578,115	269,018,224	39,355,973	17,281,762	13,686,825	541,366,694
2011-2012	67,427,105	30,669,372	108,078,979	269,831,453	39,206,730	18,213,849	13,958,818	547,386,306
2012-2013	68,537,870	31,239,823	110,646,509	270,666,846	39,058,054	19,196,208	14,236,216	553,581,524
2013-2014	69,669,125	31,820,883	113,282,652	271,524,683	38,909,942	20,231,550	14,519,126	559,957,960
2014-2015	70,821,250	32,412,752	115,989,419	272,405,249	38,762,391	21,322,733	14,807,658	566,521,452
2015-2016	71,994,635	33,015,629	118,768,883	273,308,833	38,615,400	22,472,768	15,101,925	573,278,072
2016-2017	73,189,674	33,629,720	121,623,182	274,235,726	38,468,966	23,684,831	15,402,039	580,234,137
2017-2018	74,406,770	34,255,232	124,554,524	275,186,227	38,323,087	24,962,265	15,708,117	587,396,223
2018-2019	75,646,333	34,892,380	127,565,184	276,160,636	38,177,762	26,308,598	16,020,278	594,771,171
2019-2020	76,908,781	35,541,378	130,657,514	277,159,261	38,032,987	27,727,545	16,338,642	602,366,108
2020-2021	78,194,538	36,202,448	133,833,937	278,182,410	37,888,762	29,223,022	16,663,333	610,188,450
Total	1,344,277,084	611,395,123	2,158,351,925	5,373,711,521	785,814,161	371,336,778	278,226,053	10,923,112,646

Table 33

Aboriginal Proportion of Total Cost - based on constant 2001 dollars (4%)

	Prov Adult Corrections	Prov Youth Corrections	Federal Corrections	Total Policing Costs all Gov	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2000-2001	44,028,262	18,758,846	46,016,623	118,918,800	21,257,600	5,314,400	5,845,840	260,140,371
2001-2002	45,919,602	19,595,821	52,014,046	126,182,965	21,358,975	5,649,164	6,013,247	276,733,820
2002-2003	46,616,251	20,149,522	53,712,488	139,601,962	21,512,347	6,019,429	6,200,295	293,812,293
2003-2004	47,587,752	20,570,980	55,462,855	141,466,742	21,663,921	6,413,104	6,392,306	299,557,660
2004-2005	48,577,118	20,998,397	57,266,665	143,347,295	21,813,649	6,831,613	6,589,383	305,424,121
2005-2006	49,584,659	21,434,352	59,125,482	145,243,682	21,961,483	7,276,463	6,791,630	311,417,752
2006-2007	50,610,691	21,879,012	61,040,915	147,155,968	22,107,377	7,749,249	6,999,154	317,542,366
2007-2008	51,655,536	22,332,545	63,014,624	149,084,227	22,251,285	8,251,659	7,212,061	323,801,936
2008-2009	52,719,521	22,795,121	65,048,321	151,028,536	22,393,165	8,785,478	7,430,460	330,200,602
2009-2010	53,802,983	23,266,915	67,143,767	152,988,981	22,532,974	9,352,595	7,654,462	336,742,677
2010-2011	54,906,262	23,748,106	69,302,780	154,965,650	22,670,672	9,955,011	7,884,179	343,432,660
2011-2012	56,029,705	24,238,875	71,527,233	156,958,644	22,806,219	10,594,840	8,119,725	350,275,241
2012-2013	57,173,669	24,739,406	73,819,058	158,968,065	22,939,578	11,274,318	8,361,215	357,275,308
2013-2014	58,338,514	25,249,888	76,180,247	160,994,025	23,070,713	11,995,810	8,608,766	364,437,963
2014-2015	59,524,608	25,770,513	78,612,853	163,036,644	23,199,590	12,761,820	8,862,498	371,768,525
2015-2016	60,732,329	26,301,475	81,118,994	165,096,047	23,326,176	13,574,992	9,122,530	379,272,544
2016-2017	61,962,059	26,842,975	83,700,857	167,172,371	23,450,439	14,438,124	9,388,986	386,955,810
2017-2018	63,214,188	27,395,214	86,360,695	169,265,756	23,572,351	15,354,172	9,661,989	394,824,365
2018-2019	64,489,116	27,958,400	89,100,834	171,376,353	23,691,883	16,326,265	9,941,666	402,884,517
2019-2020	65,787,247	28,532,743	91,923,674	173,504,322	23,809,010	17,357,706	10,228,145	411,142,847
2020-2021	67,108,996	29,118,458	94,831,691	175,649,830	23,923,707	18,451,990	10,521,555	419,606,227
Total	1,116,340,807	482,918,718	1,430,308,078	3,113,088,064	454,055,516	218,413,800	161,984,251	6,977,109,234

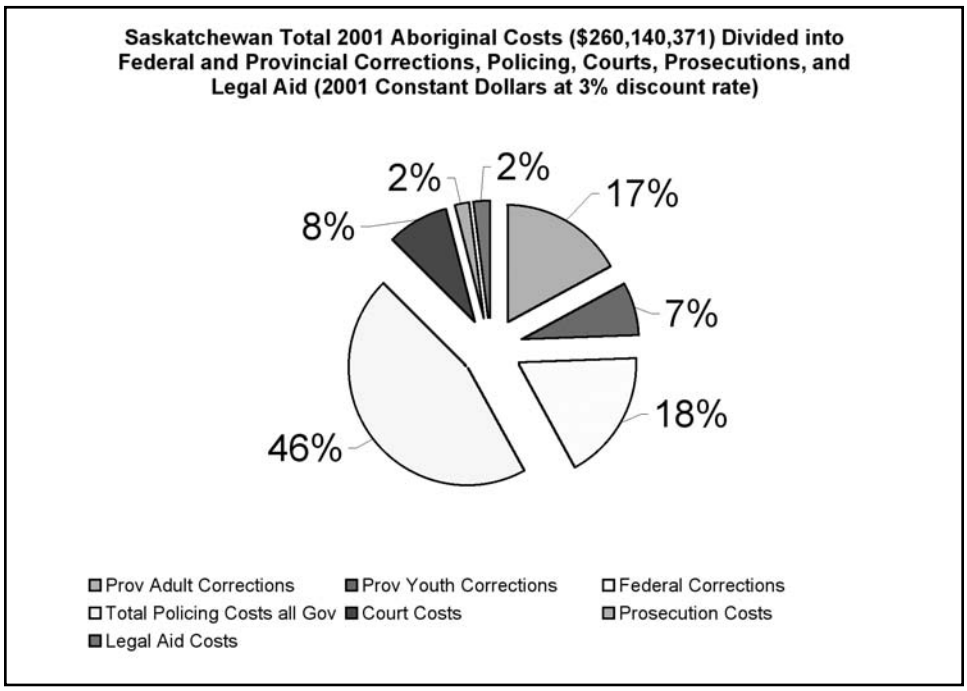


Figure 44

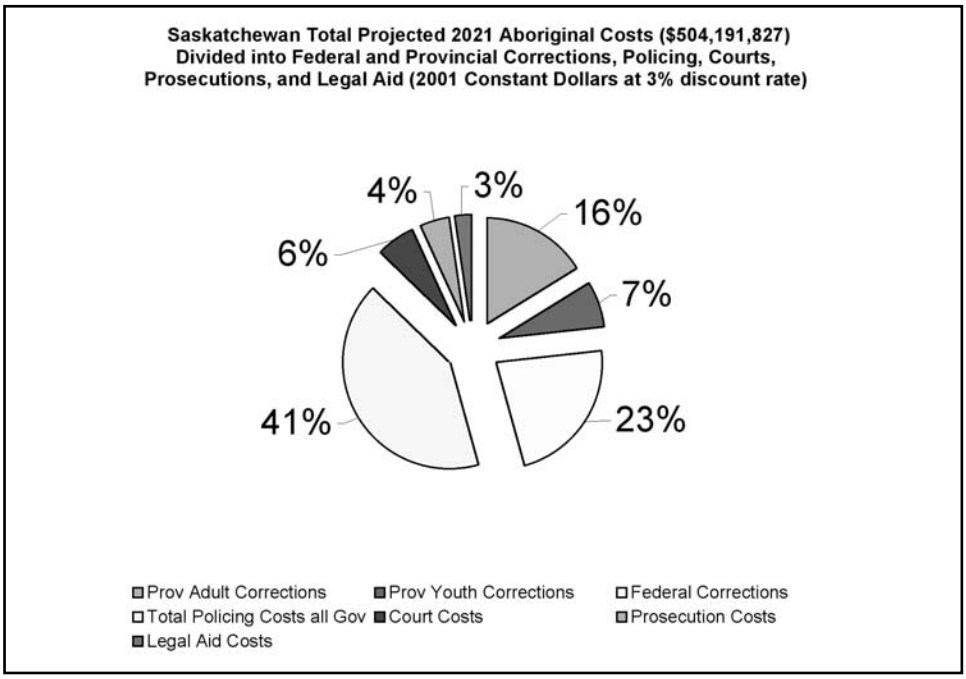


Figure 45

6.0 Measuring Alternatives: Costs and Benefits

6.1 Fetal Alcohol Spectrum Disorders and Abilities

> **The old man said, to have been born imperfect was a sign of specialness [. . .]. The old man explained carefully that in the old days, if a child came with a hare-shorn lip, it wasn't a terrible thing or a hurtful thing; it meant the child's soul was still in touch with the Spirit World.** (Johnson, *Journal 9,* Spring 1994; Wiebe & Johnson, 1998)

- 31 per cent of Aboriginal peoples report a disability (NAND, 1994).
- 16 per cent of the general population report a disability (Canada, 1995).
- 75 per cent of children in custody have some disability (Green & Healy, 2003).
- visual disability (related to high rates of Type II diabetes) among Aboriginal peoples is 2 to 3 times the national average (Durst & Bluechardt, 2004).
- hearing disabilities (ear infections associated with "permanent but preventable hearing loss") among Aboriginal peoples 1.5 times national average (Durst & Bluechardt, 2004).

One of the exhorbitant costs of educational, legal, and other institutions that disadvantage Aboriginal youth is early sexual activity promoted by drug and alcohol abuse and a desperate need to belong. That activity in turn contributes to the tragic incidences of Fetal Alcohol Syndrome (FAS), Fetal Alcohol Effects (FAE), or Fetal Alcohol Spectrum Disorder (FASD), while the federal FAS/FAE Initiative focused exclusively on-reserve leaves urban Aboriginal people to compete for inadequate resources. And high rates of HIV/AIDS among Aboriginal people (26 per cent of whom are under 30 years of age) add to the costs (Chalifoux & Johnson, 2003).

Worldwide the incidence of FAS is 1.9 cases per thousand (Boland, Burrill, Duwyn, & Karp, 1998) and it is a global and not a specifically Aboriginal issue. Though much research remains to be done and there is no national data in Canada, Boland, Burrill, Duwyn, & Karp (1998) have underlined, from a corrections perspective, the need for pre-sentence screening, identifying specific learning problems and behaviours, developing a centralized data base for research and risk management, designing awareness manuals and in-service training, appointing advocates where numbers warrant, and developing programs specific to needs and behaviours.

In 30 May and 2 October 2003 decisions, Judge Mary Ellen Turpel-Lafond struggled to reconcile the objectives of the *Youth Criminal Justice Act (YCJA)* to pursue alternatives to incarceration and respond to special needs, while faced with major gaps in provincial correctional, educational, and child welfare services that remain inadequately coordinated, though studies and reviews are in process. Such gaps in service left a teenage offender undiagnosed with FASD until Judge Turpel-Lafond's own order—and untreated. Instead, for convenience and grocery store robberies, he had served over a year in closed custody, while rehabilitative sentences "exist only in theory," according to Turpel-Lafond (Adam, 2003).

The case underlines all too starkly the barriers to change in gaps between theory and practice, in persistent investment in sentencing and warehousing offenders in jails and underinvestment in services to meet the objectives of new legislation and to address the root causes of offending behaviour. Professor Tim Quigley similarly stresses, "for some reason, we have almost unlimited resources when it comes to custody and yet very little in the community: StatsCan shows Saskatchewan is spending 85 per cent of its corrections budget on custody facilities and only 13 per cent on community services" (Adam, 2003).

When judges unpack systemic discrimination and search for reasons that Aboriginal youth come into conflict with the law, it becomes ever clearer that the solutions reside in the education, health, and social support systems. Judge Turpel-Lafond's decisions on the Aboriginal youth in *R. v. B.L.M.* [2003] meant grappling with a youth with fetal alcohol syndrome who had accumulated a record and for whom custodial sentences seemed to have had little impact on his behaviour. Judge Turpel-Lafond noted that ending the cycle of offending and protecting public safety required a community-based disposition where the youth could be supported, especially in light of his neurological impairment

caused by prenatal alcohol consumption. However, in searching for community supports, Judge Turpel-Lafond noted that even in the context of the most progressive legislation, adopting principles of rehabilitation and alternatives to custody, Aboriginal youth continue to face incarceration:

> **As this Court noted in the first judgment, judges can only implement the principles and procedures designated in legislation when community and institutional resources have been provided to support rehabilitation, special needs and so forth. It has consistently been the case with FASD youth, and M.(B.) is simply another in the assembly line who appear in the Youth Court, that there are no specific resources, supports, or trained individuals who can assist them with shelter, food, life skills, education, addictions and so forth. (at para. 29)**

Judge Turpel-Lafond attempted to find supports and to search for assistance in finding a pathway out of recidivism for this youth. Her judgment situated this youth's circumstances in the context of many that she sees as an Aboriginal judge in the Provincial Court of Saskatchewan. However, upon appeal, the Saskatchewan Court of Appeal, did not share the Judge's concern regarding custody where there are few supports. They sent the youth to jail for a long period of time on the following basis:

> **We share the sentencing judge's concerns about FASD and its impact on youth and adults in trying to avoid criminal associations. We also regret the lack of more extensive programming which will assist FASD-designated youth in overcoming their difficulties, but, where custody is otherwise lawful, to sentence a youth to probation when there is no effective support does not protect the public and is not a fit sentence.** (2003 SKCA 135, para. 67, Justice Jackson)

From the above, it seems evident that, even when faced with an appalling lack of resources to implement useful youth-related legislation and a need to protect the public, the Court of Appeal will repeatedly take the route of custody—regardless of how that may contribute, as the literature demonstrates, to excessive rates of recidivism, while showing no demonstrable benefits for public safety (Schiraldi & Ziedenberg, 2003). We know too from the literature that youth with FASD do not transfer knowledge learned in institutions into the community, and that they have diminished cognitive skills, so of what value, other than warehousing them for increasingly longer periods of time, is custody?

In order to address the situation for Aboriginal people in the criminal justice system, it is clear from Judge Turpel-Lafond's analysis that "root causes" need to be tackled to reduce excessive recidivism. Without an investment at this level, we will face ever more crippling present and future costs of custody.

Mitten (2003) likewise argues for holistic community-based treatment as preferable to incarceration as a sentencing option, especially when the disability (itself linked to colonization, residential schools, and poverty) means that any learning in the institutional setting is not readily transferred to the outside world—and because high recidivism is a necessary consequence and perpetuates the disproportionate incarceration of Aboriginal peoples. And such holistic treatment is less costly than the $46,000 per year to keep a youth in corrections or the $16,000 per year for foster care; prenatal intervention programs, by contrast, cost $3,400 per woman (Mitten, 2003).

The situation of youth with Fetal Alcohol Spectrum Disorders is part of a larger "public policy vacuum" in Saskatchewan facing Aboriginal peoples with disabilities (approximately 29 per cent of the Aboriginal population) caught in jurisdictional complexities and contradictions that often cause them to give up on services. People already marginalized by disabilities are further marginalized by their gender (in the case of women) or their location off-reserve (Durst & Bluechardt, 2004). Compounding the problems are failures of service and voluntary organizations to build relationships with Aboriginal persons, keep records, or communicate effectively, making critical the participation of two First Nations women who are quadriplegic in gathering and analysing data in the study by Durst & Bluechardt (2001) of this "hidden population"—despite rates of disability among Aboriginal peoples double the national average. That professionals understand "'disability' as a 'health' issue rather than an economic, social or recreational one" means that "First Nations or Aboriginal identity is second to the health or physical needs of the person. The cultural context is lost in the attention to the concreteness of the physical disability." Even when people had not visited the home reserve for years, the reserve "remains a first point of identity and recognition among First Nations people." The communications barriers add to difficulties and are registered in "them and us" attitudes that further alienate professionals and clients (Durst & Bluechardt, 2004).

And research in the U.S. too emphasizes similar fates for the high rates of people with mental illnesses in the justice system (Fellner & Abramsky, 2003):

- 1 in 6 prisoners is mentally ill.
- 3 times as many people with mental illness in prisons as in mental health hospitals.
- rate of mental illness in prison population is 3 times higher than in general population.
- many poor people with mental illness cannot access treatment.
- mentally ill prisoners are harassed or physically or sexually abused.

6.2 Education and Labour Force Participation

> **The "urban Aboriginal fact" has a significant impact on cities—perhaps most visibly in Western Canada. In many Western cities positive futures for urban areas are intricately tied to positive futures for Aboriginal People.** (Graham & Peters, 2002)

> **So often reports go unnoticed after their release—we do not want this report to become a dust collector on your bookshelf! . . . . Please listen to the voices of the youth in this report. . . . *Blueprints for Change* is proof that Saskatchewan youth are articulate and knowledgeable. I hope this report inspired you to begin working toward change in Saskatchewan's secondary school system.** (A. Ducette; PYD, 2003)

Drost (1995) finds that disparities in employment rates between Aboriginal and non-Aboriginal people are associated with Aboriginal peoples concentrated in urban centres and especially in poor neighbourhoods in Western cities with limited opportunities for labour market activity. But Graham & Peters (2002) caution against reading correlation as causality, insisting that residential concentrations may result from rather than cause poverty. Equally, they caution against expectations that Aboriginal peoples will adjust to urban living and end patterns of mobility and migration. Instead, they argue that ties to land remain critical to identities and rates of migration are not invariant, but reflect the social and economic circumstances of different centres and provincial and regional policy and economic environment: "Mobility and return migration may represent, then, not an inability to adjust, but an attempt to adapt to economic realities and to maintain vital and purposeful community relationships." And Newhouse (2000) importantly emphasizes that cultural identities and traditions are not inconsistent with urbanization or modernization and that Western institutions and practices are being reconfigured to support Aboriginal cultures, identities, and aspirations.

Urban Aboriginal youth are frequent casualties of jurisdictional gaps that leave them without access to life opportunities. The Department of Indian Affairs and Northern Development's Post-Secondary Student Support Program (PSSSP) limiting eligibility to Status Indians and Inuit, is one major obstacle. Chalifoux & Johnson (2003) insist that another generation of these youth cannot be sacrificed to "narrow policy thinking. It is a matter of entitlement and basic common sense not to fail this generation of Aboriginal youth. Yet, in higher education, this is what we are doing." And in the process we contribute to the growing disparity in social health indicators between the Aboriginal and non-Aboriginal populations that threatens to erode capacities for community identification and collective action and hence the formation of social capital (Putnam, 2000; Bourdieu, 1986).

This growing disparity is especially remarkable in the light of increased levels of formal mainstream education supplementing traditional knowledge in Aboriginal communities. According to Census Canada (2001), educational attainment showed striking improvements in those aged 25 to 64 between 1996 and 2001:

- from 21 to 23 per cent high school diplomas.
- from 33 to 38 per cent post-secondary certificate (53.4 per cent non-Aboriginal).
- from 14 to 16 per cent for trade certificates (higher than non-Aboriginal at 13 per cent).
- from 13 to 15 per cent college diploma (18 per cent non-Aboriginal).
- from 6 to 8 per cent university degrees.
- from 45 per cent to 39 per cent less than high school.
- 31 per cent of 20-24 year-olds attending school and 19 per cent of 25-29 year-olds.

Population aged 25 to 64 reporting Aboriginal identity, by level of educational attainment and sex, Canada, 1996 and 2001

Both Sexes	1996 Number (%)	2001 Number (%)	Growth 1996-2001 Number (%)
Less than high school	156,605 (45.2)	171,725 (38.7)	15,120 (9.7)
High school	74,105 (21.4)	101,365 (22.9)	27,260 (36.8)
Trades	48,845 (14.1)	69,265 (15.6)	20,420 (41.8)
College	45,755 (13.2)	66,805 (15.1)	21,050 (46.0)
University	21,180 (6.1)	34,465 (7.8)	13,285 (62.7)
All trades, college and university	115,780 (33.4)	170,535 (38.4)	54,755 (47.3)
Population 25 to 64	346,490 (100.0)	443,625 (100.0)	97,135 (28.0)
Men			
Less than high school	77,180 (47.3)	86,495 (41.3)	9,315 (12.1)
High school	32,490 (19.9)	45,770 (21.8)	13,280 (40.9)
Trades	29,360 (18.0)	41,340 (19.7)	11,980 (40.8)
College	16,175 (9.9)	23,580 (11.2)	7,405 (45.8)
University	8,045 (4.9)	12,440 (5.9)	4,395 (54.6)
All trades, college and university	53,580 (32.8)	77,360 (36.9)	23,780 (44.4)
Population 25 to 64	163,250 (100.0)	209,625 (100.0)	46,375 (28.4)
Women			
Less than high school	79,415 (43.3)	85,225 (36.4)	5,810 (7.3)
High school	41,610 (22.7)	55,575 (23.8)	13,965 (33.6)
Trades	19,480 (10.6)	27,940 (11.9)	8,460 (43.4)
College	29,585 (16.1)	43,225 (18.5)	13,640 (46.1)
University	13,135 (7.2)	22,015 (9.4)	8,880 (67.6)
All trades, college and university	62,200 (33.9)	93,180 (39.8)	30,980 (49.8)
Population 25 to 64	183,225 (100.0)	233,980 (100.0)	50,755 (27.7)

Source: Statistics Canada. (2003c). 2001 Census: analysis series. Education in Canada: Raising the standard.

And unemployment rates correlate with educational attainment: those without high school certificates recording an unemployment rate of 40 per cent; those with secondary (23 per cent); college (20 per cent); and university (9 per cent). Young urban Aboriginal people represent not a problem but an invaluable resource in the context of the global knowledge economy, an aging population, and skilled labour shortages. And they need to become significant players in "senior levels of industry and government" (Chalifoux & Johnson, 2003) as well as in educational and other influential institutions. Howe (2002) has demonstrated that Aboriginal people experience the highest average rate of return on investment in education.

The return on investment can be increased if Aboriginal youth gain meaningful access to educational opportunities in institutions that decolonize their own thinking (Battiste, Bell, & Findlay, 2002) and distance themselves from assimilationist residential schools designed "to kill the Indian in the child." Residential school experience is not isolated in the past, but is still felt keenly by people struggling with "their identity after years of being taught to hate themselves and their culture" and repeating patterns of abuse learned in the residential school system (RCAP, 1996b). Only by decolonizing coercive and culturally specific standards and values to appreciate the literacies, knowledges, skills, and talents that all students bring (instead of labelling some as deficient and needy) will educational institutions truly represent Plains Cree Elders' hope and challenge that "Education is now our buffalo." Only then will they reduce the approximately seventy per cent drop out rate of First Nations youth from school so closely associated with risk factors, including early pregnancies—those under 15 years of age 18 times more likely to experience early pregnancy than the general teen population and with costly medical outcomes, including FAS and FAE (Chalifoux & Johnson, 2003).

We can all gain by recovering from what Battiste (2000) calls "cognitive imperialism," even if we have not all been affected by it to the same extent or in the same ways. We have much to gain from "unfolding the lessons of colonization," learning from diverse perspectives, and seeing "the many sides of our confinement, our box" (Battiste, 2000). Decolonizing education will benefit us all by bringing together knowledges that were separated, classified, even discarded, or invested in territorial disputes over what knowledge and disciplines were central or not. Instead, different disciplines and knowledge systems could work productively for the common good and give real meaning to the Saskatchewan motto (translated from the Latin phrase *Multis E Gentibus Vires)*: "From many peoples, strength." This motto was developed in 1985 to celebrate Saskatchewan Heritage Year and proclaimed in 1986.

Again and again the Standing Senate Committee on Aboriginal peoples heard that youth want to be a source of strength, want an active voice in decision making:

> **Aboriginal youth want to be included in the debate, not as subjects but as full and equal partnered participants. We do not want you to tell us what we should do. We want you and our own leaders to work with us to find out what exactly we can do, how far we can go, how high we can reach, what**

> **walls we can knock down, what barriers we can stretch, what vistas we can surpass, and what wonders we can accomplish.** (Chalifoux & Johnson, 2003)

And models of partnerships with community are available in, for example, the National Aboriginal Youth Strategy (NAYS), an initiative bringing together Federal, Provincial, and Territorial leaders as well as Aboriginal leaders and involving Aboriginal youth. Such an initiative could be replicated at local levels without undue barriers and burdens if training and long-term resources are provided and if holistic community rather than individual and uncoordinated approaches prevail (Chalifoux & Johnson, 2003). And Graham & Peters (2002) commend federal initiatives like Supporting Community Partnership's Initiative and the National Homelessness Initiative. They commend too the Urban Aboriginal Strategy and the Prime Minister's Task Force on Urban Issues (Canada, Sgro Report, 2002) that depend on co-operation across jurisdictions and involve First Nations, Metis, and non-Status players—while challenging the federal government to target racism, recognize the diversity of urban Aboriginal peoples, and address the arbitrary categories of identity that retard real progress, serve as barriers to access, and affect women and children disproportionately.

6.3 Alternative Interventions: Benefit-Cost Comparisons

> **Former prisoners are often punished for life through a variety of consequences that affect the 13 million people who have felony convictions in [the U.S.] . . . prison time can hobble people's chances of staying in the labor market and earning good wages.** (Schiraldi & Ziedenberg, 2003)

> **From an investment perspective, both our prison and parole/probation systems are business failures. . . . The 'coercive mobility" of cyclical imprisonment disrupts the fragile economic, social, and political bonds that are the basis for informal social control in a community.** (Tucker & Cadora, 2003)

Counting the Costs

If research is increasingly showing the costs and failures of punitive sentencing and lengthy periods of incarceration, the result has been to turn attention to alternative interventions, their benefits and costs. Still, as then Justice Minister Anne McLellan makes clear, public policy (as well as judicial decision-making) often fails to attend to research findings. We continue to imprison youth at enormous expense to communities, even when we know that incarceration hardens criminality, while alternative measures "can do a better job of ensuring that youth learn from their mistakes" (qtd. in Green & Healy, 2003).

Tough on crime policies have produced crises involving seriously deficient and deteriorating infrastructure, budgets spiraling out of control, and criminality reproducing rather than reducing. But crises have also brought some unlikely

constituencies (fiscal conservatives and liberal reformers) together to rethink alternatives to incarceration, harm reduction, and crime prevention at their roots. Alternative measures have become ever more necessary in the case of offenders being released without any or adequate preparation or programming into a social world where they face few options.

In some cases ex-prisoners find return to a "normal life" impossible, even illegal. In some US states, they find themselves facing further punishment in the form of laws prohibiting:

- collecting welfare.
- accessing public housing.
- receiving food assistance.
- getting drivers' licenses.
- voting in elections (48 of 50 states).
- applying for student loans.
- gaining employment with agencies or companies supported by grants. (Saunders, 2004)

The consequences for local communities and state legislatures are becoming clear as the products of the "war on crime"—"a flood of tough, desperate and often unemployable people"—are "threatening to create a permanent criminal community." In the State of the Union address, President George W. Bush promised $300-million for "a four-year 'prison re-entry initiative' that would provide job training, housing and mentoring to released inmates." To turn a potentially explosive situation around, experts anticipate much greater spending will be needed to address the products of earlier justice decisions that greatly expanded the prison system but released prisoners with "$20 and a bus ticket" (Saunders, 2004).

With the help of Canadian consultants, Fort Wayne, Indiana, in 2000 established programming (ReEntry Court) to help ex-prisoners find work and housing and get training and treatment. In its first three years, only 19 per cent of participants have re-offended and been arrested. Without the program, 63 per cent of offenders re-offended and returned to prison (Saunders, 2004).

New Jersey, home of the highest proportion of drug offenders in the U. S. prison population, offers a useful case study on the excessive costs of and low returns on high rates of incarceration, the disproportionate impact on youth, women, and African Americans, Latinos, and other non-white communities, as well as the benefits and costs of alternative interventions proposed in the *Preliminary Strategic Planning Document* by the New Jersey Department of Corrections and

assessed by Schiraldi & Ziedenberg (2003). Between 1986 and 1999, for instance, drug offenders entering prison increased by 475 per cent for African Americans and 112 per cent for whites, but 446 per cent for youth, and 700 per cent for African American youth. And the result of mandatory minimum sentences and "drug free school zone" legislation targeting poor urban centres and not suburbia has been to concentrate drug users in prison and aggravate racial disparities. The budgetary consequences include:

- one of every 14 general dollars in state spending on prisons.
- corrections cost increases of 946 per cent between 1977 and 1999.
- prison costs 2.5 times education spending.
- resources that "educate, enrich and build communities" shifted to "employment that arrests, detains, and incarcerates."
- Police and correctional employment increases of 494 per cent, higher education 201 per cent, and public welfare employment 241 per cent between 1980 and 2000. (Schiraldi & Ziedenberg, 2003)

In other words, the state had "to choose between classrooms and cellblocks," while removing "resources, treatment dollars and people from communities, and concentrat[ing] spending in prisons far from offenders' communities," re-incarcerating parole violators without demonstrable benefits for public safety (203,000 in 2000) or reduced drug use (increased by 33 per cent; prison admission by 29 per cent), and further distorting the economic landscape. And the findings in New Jersey have been confirmed in studies showing correlations between higher incarceration and increased drug use. Furthermore, the economic, emotional, and social impact on women (and their families, communities, and care provisions) of prison terms is disproportionately huge, while their crime has a small economic impact (Schiraldi & Ziedenberg, 2003).

What the New Jersey case makes clear is that all members of society have an interest in effecting change and ending the illogic of eroding public infrastructure and human resources and endangering public safety, while spending millions of dollars incarcerating people only to return them—"stigmatized, unskilled, and untrained"—to "neighborhoods weakened by their absence and burdened by their return" (Tucker & Cadora, 2003). And that the public understands as much is evident in February 2002 Hart Research poll results showing seventy-five per cent of Americans approving probation and drug treatment instead of incarceration for nonviolent offenders and "a substantial majority" supporting an end to mandatory sentencing (Schiraldi & Ziedenberg, 2003).

Reaping the benefits

In the U.S. a significant part of "justice reinvestment" involves redefining public safety. According to the Wisconsin Governor's Task Force on Sentencing and Corrections, 1998, that definition was "hidden in plain view" in the mission of

the Department of Corrections not to warehouse people but "to ensure the safety and protection of the public." Drawing on this suggestion, Tucker & Cadora (2003) advocate "a geographic approach" devolving responsibilities to local government; targeting resources for education, health, childcare, job training and creation; reducing risk factors; and requiring partnerships among parole officers, individuals, community, and government. Redirected resources could be leveraged to entice further public and private investment—and all of this designed to enhance public safety, strengthen communities, and rebuild "physical infrastructure and social fabric" instead of sucking resources from them to state prisons.

In 1997 Oregon legislation allowed for the supervision of juveniles in community programs rather than state institutions, using the $50,000 per youth per year to invest in prevention programs, community service, and neighbourhood development projects—schools, parks, libraries, healthcare. A further incentive for the program was that the county was financially responsible for any youth incarcerated. The result in Deschutes County was:

- within one year youth incarceration reduced by 72 per cent.
- youth averaging 204 hours community service (4 hours for incarcerated youth).
- child advocacy centre and homeless shelter built in weeks.
- the state saving $17,000 per case. (Open Society, 2003)

And research on targeted programs shows that participating offenders are less likely to re-offend and that high-risk offender program participation is associated with a 50 per cent reduction in recidivism (Correctional Services Canada, 2000). The federal Aboriginal Pathways Strategy designed to address over-incarceration by offering "Aboriginal-specific institutional and community healing programs" is projected to enhance participation, increase respect for Elders and others, increase transfers to minimum-security and healing institutions, and reduce institutional costs in addition to reducing the gap between Aboriginal and non-Aboriginal offenders (male and female) in these areas (Green, 2002):

- time served before conditional release.
- parole grants and waivers.
- revocation orders.
- returns 5 years after warranty expiry.
- security and risk.

A cost-benefit analysis of Hollow Water's Community Holistic Circle Healing (CHCH) in Hollow Water First Nation in Manitoba aimed to identify the benefits of the ten-year program designed to redress inter-generational sexual abuse in a

community where an estimated 75 per cent were victims and 35 per cent "victimizers" (Ross, 1994). Not only did the evaluation identify improvements in the health and wellness of the community—better parenting, increased safety, extended school attendance, and reduced demand for substance abuse treatment—but Hollow Water's Community Holistic Circle Healing (CHCH) resulted in a very low rate of recidivism (2 of 107 offenders) **and** saved money in the order of $3,212,732 over ten years for provincial and federal governments:

- for every $1 contributed by provincial government saved $3.75 for pre-incarceration, prison, and probation costs.
- for every federal dollar, it would have spent $2-$12 on incarceration and parole costs.
- for every $2 the government spends, the community receives between $6 and $15 worth of services and value-added benefits. (Couture, Parker, Couture, & Laboucane, 2001)

Research is clear too on the benefits of sport, art, and recreational activities in promoting health and cohesion in families and communities, reducing hopelessness and negative behaviours, nurturing talents, enhancing self-image, while bringing structure, creativity, teamwork, and problem-solving skills to youth. Yet these are often the first programs to be cut. Financial barriers need dedicated funding; a Manitoba survey indicated that 10 per cent of 1,000 children owned sporting equipment (Chalifoux & Johnson, 2003).

The case of the Offender Substance Abuse Prevention Abuse (OSAPP) is also striking in this regard. Evaluation by Adults Corrections reveals that the re-offending rate is reduced by 17 per cent, though the longer term impact is reduced because of failures to invest in supportive programming. After two or three years, offenders tend to re-offend because of "a lack of ongoing support and community programs" (SJSCPS, 2003).

Rethinking Victim Services

A similar story emerges in the case of victim services, a responsibility of the provincial administration of justice under section 92 of the *Constitution Act, 1982*. If there is increasing agreement among the public and criminal justice system stakeholders that victim services need to be central to the system and the system (begun in the province in the mid-1980s) amasses tens of thousands of **volunteer** labour and input annually, significant challenges of funding remain.

Building on meetings in 1996 between Saskatchewan Justice's Victims Services Branch with 27 Aboriginal organizations and victims of crime, Saskatchewan Justice expanded crime prevention programs for Aboriginal youth, programs to address family violence, victim services programs in northern Saskatchewan, and developed Aboriginal Resource Officer programs. In addition, in 1996 the Victims Services Branch included Elders in the definition of "counselor" for the purposes of the Victims Compensation Program covering costs of counseling, ambulances, lost wages, and uninsured dental and medical expenses.

Saskatchewan Justice is currently evaluating programming (police-affiliated and Aboriginal Resource Officer programs) and preliminary results show good success and satisfaction levels. Though more needs to be done in the north, on-reserve, and in rural Saskatchewan, the services already rely on a huge commitment of volunteer labour. In 2001-2002 alone, 320 volunteers donated 24,000 hours to support 16,000 victims of crime. Support on-reserve remains a major challenge at a time when the federal government maintains its view of its jurisdiction and refuses to commit funding in that area (SJSCPS, 2003).

Valuing Volunteerism

Volunteerism remains a critical part of the sustaining of alternative measures.

Volunteering and Justice

Every year thousands of individuals offer their time and skills, volunteering in justice-related, non-profit organizations and groups. Justice sector volunteers may participate in agencies (including those in the government sector), that provide legal services, promote crime prevention and public safety, rehabilitate offenders, provide support and services for victims of crime and protect the rights of consumers. According to the 2000 National Survey of Giving, Volunteering and Participating (NSGVP), more than 118,000 people in Canada volunteered over 13.3 million hours of their time in these types of law and legal service organizations, between October 1, 1999 and September 30, 2000. The number of volunteers in justice-related organizations dropped 9 per cent since 1997, the last time the NSGVP was conducted. Of all Canadians who reported volunteering in the last year, justice-sector volunteers accounted for 2 per cent. Despite fewer volunteers, the average number of hours volunteered rose from 82 hours/year in 1997 to 108 hours/year in 2000. In addition to time, more than 676,000 Canadians gave donations totalling $17.9 million to law and legal service organizations during 2000. The average donation was about $25.

Source: Statistics Canada (2000) National Survey of Giving, Volunteering and Participating. Statistics Canada, 1997 National Survey of Giving, Volunteering and Participating.

In line with such high levels of volunteerism, the Aboriginal Corrections Policy Unit (ACPU, 2002b) promotes community capacity building as a long-term response that takes control and ownership of issues from outside "experts" and extends responsibility to community members and institutions to remake the future by developing holistic approaches for "sustainable well-being and prosperity." Part of a broader Aboriginal Healing Movement from the 1980s

coincident with a cultural renaissance, initiatives mapped by ACPU (2002b) address the colonial legacies of disease and trauma, destruction of traditional economies, identities, and governance, family and community breakdown—and the particularly acute consequences for Aboriginal youth. Best practices demonstrate the efficacy of community participation and control, culture as treatment, the vital role of traditional ceremonies and practices, Aboriginal role models and media, and the inextricability of healing and community development. They do not endorse RCAP's recommendation for healing centres and lodges, but find, "Community-based and systemic approaches are both more effective and more cost-effective than the development of institutional facilities." While underlining the ongoing need for better measures of efficacy, ACPU (2002b) also reports the finding of a major study by Eliany & Rush (1992) that "Community-wide interventions such as education and media campaigns appear to be most effective towards changing social norms rather than fostering behavior change."

ACPU (2002a) has learned too from the experience of the "Scared Straight" program begun at Rahway Prison, New Jersey, in the mid-1970s. That program has shown "no significant change in attitude" in the targeted youth. Despite minimal deterrent effect, the programs continue "because of contextual factors such as political climate, media climate and simple inertia"—all "backed up by the all-too-common belief in the panacea of deterrence." Not only was it ineffective, but it was manifestly inappropriate in approach for First Nations (ACPU, 2002a).

Instead, projects in Canada like The Stone Path in Manitoba have made good use of offender experience to have them give back to the community by working with First Nations youth (10-14 years of age) to prevent crime by teaching them about the realities of gang life. Thus, there was a "double benefit" to the program (ACPU, 2002a). Similarly, Partners in Healing in British Columbia exploited offenders as a resource, especially their skill and rapport with young people. Working under the guidance of the Elders, parole officers, correctional staff, lawyer, and members of the community, selected inmates with minimum classifications (including lifers experienced in matters spiritual) met in circles with school, college, and university Native Education classes. Again the benefits were mutual, though the program fell victim to inadequate fiscal and administrative support. But some "brothers" still participate and the young drum group lives on (ACPU, 2002a).

And Saskatchewan Justice and Corrections and Public Safety (SJSCPS, 2003) likewise supports partnerships, integrated strategies, and community capacity building, including initiatives of the LaLoche Community Development Corporation (to coordinate and administer justice services, including prevention, victim services, courtworker and translator/interpreter services).

The Regina Alternative Measures Program (RAMP), established in 1996 as a restorative justice program, built on grassroots initiatives of Aboriginal organizations to Aboriginal and non-Aboriginal youth and adults in Regina in conflict with the law. It is now widely recognized as "one of Canada's leading

authorities on Family Group Conferencing practices'' (RAMP, 1999). The RAMP (1999) Year End Report makes vivid the costs and benefits of such alternatives to the court system, based on a ''typical'' youth offender. The cost saving for the one offender was $2,393.50; for the 63 young offender ''assault'' referrals in 1998, the saving would have been $150,790.50 per year. The benefits included:

- 3001 referrals (60 per cent adult, 40 per cent youth) from the court system between 1996 and 1998.

- overwhelming majority of adult and youth offenders completed their alternative measure requirement and had charges dropped.

The Saskatoon McNab Park Youth Project is another such success story, showing a remarkable return on the investment of community resources in a 78 per cent decrease in crime, enhanced infrastructure, and strengthened community capacity (Lockwood, 2003). And the Peacekeepers Program is another model showing how to rethink relations between police and youth in a long-term commitment based on various activities. After a one-year period of involvement, 50 per cent of participants did not re-offend; the remaining 50 per cent were involved in minor offences (Sinclair, 2004).

Evaluating Restorative Justice

Expanding rapidly in the 1990s, restorative justice, a set of principled approaches to justice in Canada, has built on Aboriginal traditions, faith communities, and non-governmental organizations, while supporting international principles and guidelines. Focused on victims, offenders, and communities instead of professional ''experts'' taking active roles, restorative justice has no single definition, but has taken a number of forms and been used at different stages for youth as well as adults in justice. Though support for restorative justice has been significant, concerns remain about how programs are designed, who delivers them, whether victim rights and interests are appropriately considered, what training is available, and what criteria and standards of evaluation apply (Cormier, 2002).

A meta-analysis by Bonta, Wallace-Capretta & Rooney (1998) of 14 evaluations found an 8 per cent reduction in recidivism. A comprehensive analysis by Latimer, Dowden & Muise (2001) of 22 studies of 35 restorative justice programs—focused on crime as violation of persons and relationships and the voluntary gathering of parties in safe settings (circles, conferences, and victim-offender mediations) to repair the harm and heal the community—identified these benefits:

- high satisfaction of offenders and victims.

- offenders more likely to make restitution.

- re-offending reduced by 7 per cent.

SJSCPS (2003) reports similar results in the province with strong evidence of community involvement, 80 per cent youth and adult alternative measures cases resulting in agreements on remedy, about 90 per cent fulfillment of agreements, and a 4:1 correlation between increased alternative measures and reduced community caseloads. Investing more consistently and effectively in alternatives, supporting and coordinating police and other agencies and stakeholders to increase pre-charge referrals, could further reduce formal charges and costs to the justice system.

Though the successes are striking, it remains a major challenge to persuade public opinion and decision-makers of the benefits of change and the costs of resorting habitually to the court system and traditional sentencing and other procedures that research has proven inadequate to reduce recidivism or to enhance public safety. In the contested terrain of public opinion on crime and justice, as Roberts (2001) makes clear, the good news "has a hard time competing with the daily reports of individual crime impacting on local communities." It is especially challenging when capacities to evaluate and measure the benefits and costs of alternative measures (including the range of social, human, and physical infrastructure) still need to be refined—and especially to do so in terms meaningful to the public habituated to "hard data."

7.0 Conclusions

7.1 Recognizing Individual and Collective Responsibilities

> **Yes, we can go around blaming other people, but it begins with us, as the Elders say. But our children, we must teach them the walk of our ancestors.** (Speaker at Pelican Narrows dialogue, Commission, 2003c)

> **Justice reinvestment "is more than simply rethinking and redirecting public funds. It is also about devolving accountability and responsibility to the local level. Justice reinvestment seeks community level solutions to community level problems."** (Tucker & Cadora, 2003)

While governments continue to argue on "the semantics of responsibility," according to the Privy Council Office (qtd. in Chalifoux & Johnson, 2003), the Federation of Saskatchewan Indian Nations has shown leadership in accepting responsibility, in stressing that youth gangs, for instance, are "a manifestation of our collective social and services breakdown for which society and communities are responsible" (FSIN, 2003). Responding to a complex set of issues means for the FSIN a collaborative response and working with other groups, including the Saskatoon and Regina City Police and the RCMP as well as academics and universities to build community capacity and educate the general public. Especially important is a relationship with the Correctional Service of Canada and the Prairie region's Aboriginal Gang Initiative under the title *Bimosewin*—"an Ojibway term meaning taking responsibility for one's life" (FSIN, 2003).

Only by such collective ownership will the province live up to commitments to the United Nations Convention of the Rights of the Child and the duty to protect children's rights:

> **The principle of non-discrimination is included in all the basic human rights instruments and has been carefully defined by the bodies responsible for monitoring their implementation. The Convention on the Rights of the Child states frequently that States need to identify the most vulnerable and disadvantaged children within their borders and take affirmative action to ensure that the rights of those children are realized and protected.** (qtd. in FSIN, 2003)

> **Our children and the community can no longer afford the price the legal system is extracting in its attempts to provide justice in our community.** (1993 position paper by Community Holistic Circle Health Program [CHCH]; qtd. in Ross, 1994)

If incarceration seemed self-evidently the best solution to end the cycle of abuse in the community of Hollow Water, Manitoba, and especially in "too serious cases," decision-makers soon discovered that boundaries between levels of seriousness were not readily maintained, were indeed "gross over-simplifications, and certainly not valid from an experiential point of view." What is more, incarceration had less to do with "healthy resolution of the victimization" and addressing "the complexity of the issues" (Ross, 1994) than with mixed feelings and personal issues and reinforcing the very behaviours it was designed to end. Even the threat of punishment proved counter-productive and reinforced the silences that sustain cycles of violence:

> **The use of judgement and punishment actually works against the healing process. An already unbalanced person is moved further out of balance.**
>
> **What the threat of incarceration does do is keep people from coming forward and taking responsibility for the hurt they are causing. It reinforces the silence, and therefore promotes, rather than breaks, the cycle of violence that exists. In reality, rather than making the community a safer place, the threat of jail places the community more at risk.**
>
> **. . . The healing process of all parties is therefore at best delayed, and most often actually deterred. . . . We cannot understand how the legal system doesn't see this . . .** (1993 position paper by Community Holistic Circle Health Program [CHCH] qtd. in Ross, 1994)

The representatives of the CHCH program did not equate their position with either "an easy way out" for victimizer, or with the victimizer "getting away," but with a means of "establishing a very clear line of accountability between the victimizer and his or her community":

> **Our children and the community can no longer afford the price the legal system is extracting in its attempts to provide justice in our community.**

7.2 Making Mainstream Institutions Accountable

> **Free your minds from the need to dominate First Nations Peoples because the pain and suffering that this criminal justice system has inflicted upon First Nations people cannot continue.** (Flavel; cit. in Gosse, Henderson, and Carter, 1994)

We can only produce meaningful change if we turn the critical gaze more fully on the system—its culture, personnel, programs, policies, and procedures—rather than yet again quantifying those who are processed, penalized, and rendered passive by that system. And we should not leave that work only to the so-called "experts"! We (and the institutions of the law, education, and religion, for example) are all implicated in a history of injustice and are all capable of contributing and co-operating to produce new solutions by building on the excellent work—and clear directions—of the Commission Stakeholders Roundtable and activating the intelligence and knowledge systems of all of us inside and outside the justice system.

When Aboriginal peoples "say today that they have had to go to court to prove they exist, they are speaking not just poetically, but also *literally"* (Culhane, 1998). And there is no denying the costs of such defensive postures (especially with limited resources) and the charges of special pleading they typically entail. What Monture-Angus (1995) recommends is a refocussing of energies and analyses, "turning the conversation around so that Canada is required to be accountable for the wrongs it has perpetuated . . . . an articulation of their role rather than a repackaging of Aboriginal thought."

It means probing the discourses of free inquiry and exchange, critical thinking, objectivity, impartiality, neutrality, disinterest, and excellence of mainstream authority, discourses that support while masking the interests of a privileged few. The more individuals and institutions are invested in these discourses, the less able they are ironically to countenance or tolerate, far less promote and value, difference–the diversity of thinking on complex matters, the diversity of interests people seek to advance, the diversity so crucial to a multicultural society and its democratic institutions. And it is the so-called "hidden curriculum" in education (Jackson, 1968), including legal education, what Dorothy Smith calls "relations of ruling" (qtd. in Margolis, 2001), so prominent yet so natural and habitual as to be invisible, that masks the particular interests of a disinterest that is an indifference to all but the privileges of the status quo.

To refashion the future and derive strength from our many peoples (as the Saskatchewan motto suggests), the mainstream might recall the privilege of carrying on conversations in their own languages and consider the experience of those who have so long experienced the justice system in terms of contradictions experienced when "forced to negotiate, converse, and discuss in a second and foreign language" (Monture-Angus, 1995). The system might ponder and take responsibility for its own role in producing and reproducing inequity and injustice, its own role in constituting race and racism, in labelling and thereby reproducing divisions and delinquencies. Then the system might be better able not only to respect but also to **internalize** the values and traditions of Aboriginal peoples for a holistic approach to justice.

Then we might not only give token respect but put Aboriginal values and traditions at the heart of everything we do. Then we might end the casual dismissal of integrated, holistic forms of healing that do not fit "the abstracted disciplines of Euro-Canadian universities" and thus "seem to include everything and therefore seem to mean nothing" (ACPU, 2002b). Then we might **all** experience a system that understands human values instead of abstracting people from their social and cultural contexts, a system that understands its mutual responsibilities and does not compartmentalize, hide behind narrow expertise, or pass the buck, but communicates across boundaries of expertise, race, gender, and abilities in the name of justice. Then we might "live most nicely together." And, as Monture–Angus (1995) makes clear, "Living nicely together is an onerous standard." If we can achieve these standards we can live up to the hopes of Erasmus (2002): "The world needs a model of peace and friendship between peoples that Canada is uniquely positioned to provide."

7.3 Ensuring Meaningful and Equitable Access

> **Let us face it, we are all here to stay.** (Chief Justice Lamer, *Delgamuukw v. British Columbia* [1997])

Making mainstream institutions accountable to all members of society is importantly related to meaningful and equitable access to institutions. Equitable access means redirecting resources **from** an exceptionally costly justice industry that categorizes and punishes **to** a more cost-effective set of alternative programs that targets mental and physical health, education, employment, and skills training that can prevent risk and promote capacity. Thus, we convert costs to benefits.

And equitable access means addressing barriers of history and geography, of race, ethnicity, class, age, gender, sexuality, and abilities that have disadvantaged First Nations and Metis peoples. To do otherwise is, as the Commission (2003c) makes clear, to revictimize people and subject them to continued risk of violence. The system has significant discretion at every stage—a privileged capacity that currently does a disservice to First Nations and Metis peoples, while continuing to advantage the mainstream on whom disproportionate resources are spent.

The example of Justice Gerald Morin with the Northern Cree Circuit Court (begun in October 2001) underlines the importance of those involved in court proceedings feeling legitimate and empowered to participate with some confidence and clarity. The court hearing cases in Sandy Bay, the Big River First Nation, and Pelican Narrows has judge, Crown prosecutor, court clerk, and two probation officers who speak Cree fluently. The Legal Aid lawyer has the support of an interpreter. Drawing on restorative justice approaches and referring many cases to human services agencies (SJSCPS, 2003), the court is being proclaimed a success with no appeals on record, though a formal Saskatchewan Justice evaluation is not yet complete. Justice Morin has talked powerfully about the value of the Cree court experience for the **feeling** of empowerment and justice by those given voice in their own terms. Not only do people feel better connected to the process and personnel, but there is a capacity to innovate in court practices that further attracts respect—and even adulation from some "groupies" who attend Justice Morin's court. And such legitimacy is increasingly being demanded by other groups, such as the Dene, and in other sectors like health and education. Still, there are those that point out the system remains unchanged: "It's the system that we have to reform not as much as the people that work in it" (Commission, 2003c).

For Chief Roy Cheecham of Clearwater River Dene Nation, what communities need is education and training rather than more policing on-reserve. The RCMP has 14 members: "A fifteenth member is not the answer. At a cost of $100,000 per officer when salary and benefits are taken into consideration, you wonder if that $1.4 million couldn't be spent proactively. If you don't change the status quo, you'll need 28 officers in ten years" (Commission, 2003c).

7.4 Moving Forward in Multiple Sites in Multiple Ways

> **Keep a few embers**
> **from the fire**
> **that used to burn in our village,**
> **some day go back**
> **so all can gather again**
> **and rekindle a new flame,**
> **for a new life in a changed world.**
> (Chief Dan George & Helmut Hirnschall, 1974; qtd. in RCAP, 1996a)

No single strategy can effectively dislodge entrenched attitudes or patterns of behaviour (individual or institutional). Decolonizing to fashion postcolonial community futures requires attention to multiple and conflicted histories and geographies that have generated current challenges and opportunities. It means working together across our differences, refusing the old colonial categories that would police the boundaries of identity and relationship. It means promoting new coalitions, co-operation, and capacity building. We all have a stake in dismantling colonial legal and educational structures or other oppressive singularities that deny or distort our legitimate differences. Thinking in "a

decolonized way'' (Monture-Angus, 1995) is important for all of us because colonialism is what has taught us all—colonizer and colonized—how to (de)value difference, how to fragment and compartmentalize, how to legitimate the illegitimate, and how to reproduce hierarchy and disadvantage.

The Ontario Commission on Systemic Racism in the Criminal Justice System is clear that the way forward requires the following strategies:

- Anti-racism training of justice system personnel.
- Employment of racialized persons in the administration of justice.
- Participation of racialized persons in the development of justice policies.
- Monitoring of policies for evidence of racial inequality.

The ''elimination of systemic racism'' means integrating the principles of inclusion, responsiveness, and accountability into all aspects of the criminal justice system, together with an overriding commitment to restraint when invoking judicial sanctions'' (qtd. in Commission, 2002).

We also need stories of those who have survived and succeeded, those First Nations and Metis academics, activists, elders and leaders, lawyers and judges—those role models—that have already made a difference in the justice system. And we need, as Turpel (1994), argues, ''a new kind of political openness and honesty'' so that we can redefine the future by ''thinking concretely and sympathetically'' together.

Then we might act collectively to change the status quo recognizing that First Nations and Metis crime is not the problem, that we also need to look to mainstream institutions for the root causes and risk factors associated with crime, and recognize, value, and promote First Nations and Metis institutions, ways of knowing, and participation in justice activities, problem-solving, and healing. We all have a stake in change, and we are all damaged by the residues and resurgences of colonial thinking and practice that perpetuate injustice. We cannot build effectively for the future within colonial monopolies on definitions. We cannot build effectively if, as Erasmus (2002) argues, ''the conversation starts with the unilateral declaration 'You are not who you say you are!'''

It costs our community every time any of its members experiences fear, harassment, exclusion, illegitimacy, intimidation, alienation, hopelessness and every time people's powers, perspectives, and potentials are overlooked or undervalued. ''The costs of conflict, in the courts and in society,'' says Erasmus (2002), ''are unsupportable. The costs of doing nothing escalate with each generation. We have the capacity to imagine a better future and we have the tools at hand to realize it.''

Erasmus (2002) wants to reframe the terms of intercultural discourse to renew ''relationship between aboriginal and non-aboriginal peoples in Canada.'' Instead of resorting to legalistic discourse, this means talking ''people to people'' as well

as "nation to nation," nourishing the "national community" by "an ongoing act of imagination, fuelled by stories of who we are." To renew the relationship of "mutual trust" on which the "peaceable kingdom" rests, Erasmus (2002) recommends three discursive shifts: "from aboriginal rights to relationship between peoples; from crying needs to vigorous capacity; from individual citizenship to nations within the nation state." In this message, Erasmus repeats the message of the multi-volume, but long neglected Report of the Royal Commission on Aboriginal Peoples (1996). Instead of polls and surveys and "unilateral declarations" and coercive definitions, we need stories and symbols that will fire the imagination to see us, as in the two-row wampum belt, "travelling together on the river of life." Then we might forget Aboriginal peoples as "exceptionally needy" and focus on Aboriginal capacity and the remarkable successes achieved all over the country in so many sectors.

If we can respect and **internalize** the values and traditions of Aboriginal peoples within mainstream institutions, then we might "live most nicely together" (Monture–Angus, 1995). If we can redeem our institutions and make them more relational, sociable, and modest, then we might live up to the hopes of Erasmus (2002) that Canada offer the world "a model of peace and friendship between peoples that Canada is uniquely positioned to provide."

7.5 Redesigning Research, Decision-Making and Policy Development

> **The pathway to a new relationship is paved with the long-term commitment to share the definitional power that creates the legitimacy whereby words and phrases gain their accepted meaning. . . . The re-examination of the way language sanctions particular worldviews and understandings is central to this process of change.** (Monture-Angus, 1999)

Instead of focussing only on problems (and their solutions), this report highlights opportunities for positive outcomes benefiting all and helping to realize the Commission vision of "Meyo Wahkotowin—One Community," its vision of a community no longer divided by colonial thinking (either/or and us/them) and identity categories that do an injustice to our common humanity. Instead, the Commission mandate means communities **researching and working together** across our differences—indeed, drawing strength from our differences (both/and and an inclusive "us")—"to create a healthy, just, prosperous and safe Saskatchewan."

If we not only value and respect First Nations and Metis identities, traditions, and heritage, but also make them foundational to all we do, then we might develop a revitalized justice system that speaks to and commands the respect and confidence of all of us in Saskatchewan. We might more effectively dispel myths and fears that have hindered change, recognizing that the barriers have been a product of colonial thinking, a product of our own minds, our versions of William Blake's "mind-forg'd manacles." Thus, we might more effectively build

on and give real meaning to initiatives like the four strategic approaches of Saskatchewan Justice and Saskatchewan Corrections and Public Safety: building community ownership and capacity; developing partnerships; adapting the criminal justice system to recognize and respect values of Aboriginal peoples and meet needs for safety and security; and improving service effectiveness to all stakeholders. The words are inspirational, but now we need action.

A justice system that relies too heavily on professional expertise and so-called hard data or quantitative measures is inclined to leave qualitative measures off the map (or relegate them to secondary status) with profound consequences for the perceptions and decision-making of the general public and policy makers. And belief in the "hard" data's ability to describe reality obscures how the data help produce the very "problems" they claim exist "out there" in the real world—much as the notion of terra nullius justified "the discovery" of North America and the dispossession of its peoples. Dominant forms of demographic representation, for example, is marred by what is considered valuable and what not, what is and is not collected, and by persistent statistical comparisons based on faulty baselines—as is the case with projecting police and other participation rates on the basis of findings by Quann & Trevethan (2000) and projecting the participation rates of Aboriginal youth and adults on the basis of their proportional representation in the population at large. It is also marred by the colonial categories and simplifications of complex identities (collapsed into the crude calculus of Aboriginal/non-Aboriginal, for instance). In the process specifically Metis concerns in Saskatchewan and Inuit concerns in the North often miss the radar.

And when financial accounting measures dominate, a range of benefits such as social, physical, and human capital—less tangible but no less real in people's lives—fail to register in the benefit-cost calculus. Working together on data collection and demographic representation—professionals and local community members, people representing our diversities in ethnicity, gender, age, abilities, etc.—we might counter these dominant reporting trends by attending to qualitative as well as quantitative measures, stories as much as statistics, to give better assessments of costs and benefits.

Further, surface concern with social indicators diverts attention from the ways that the justice system has itself been the source of domination and oppression **and** leaves people feeling impotent to act or to intervene in historical "cycles" that seem destined to repeat themselves. To ignore the role played by the law in establishing and enforcing definitions of race as well as racial stereotypes and discrimination (Backhouse, 1999) is to defer indefinitely meaningful reform to the administration of justice and the realization of Aboriginal aspirations. Not to recognize that "over-representation" depends on representational presumptions that unfairly racialize–that is, categorize and generalize on the basis of a single feature presumed to be defining—while claiming objectivity is likewise to defer meaningful change. Thus, the tool of "over-representation" contributes in turn to broad characterizations of "cultural divides," to insufficient analysis of the meaning of these privileged justice indicators, to failures to hold the system to account—and to a diminished ability to intervene and change the way things are done.

In the meantime, the allocation of resources continues to support lucrative expertise to define and address problems and solutions **for** Aboriginal peoples who continue to be excluded in large measure from control of the process. It is ironic that those who disdain Aboriginal ways of knowing and want Aboriginal people to acquiesce to mainstream ways are precisely the ones who hold most tenaciously to their own cultural and privileged presumptions about knowledge, evidence, and justice.

At the same time, the system continues to rely heavily on tens of thousands of hours of volunteer labour, knowledge, and experience, while under-valuing and under-resourcing alternative programming supported by volunteers—programmes that.have proven benefits in terms of recidivism rates, for instance, and that build social cohesion by returning economic benefits to communities, ensuring greater client satisfaction, and reducing need for further intervention.

Throughout this report quantitative data and qualitative measures show an Aboriginal sector of the Saskatchewan population increasing—and the costs of their participation in the justice system likewise increasing substantially if we do not acknowledge our responsibilities for the current state of affairs and recognize our collective interest in change. While past research has typically exaggerated "exploding populations" and "mass exoduses" from reserves so that public and policy-makers have been inclined to read the data as threatening for the future of the province, our research and experience present a positive future in which Aboriginal peoples contribute powerfully to the social, cultural, political, legal, and economic fabric of Saskatchewan.

Those that maintain faith with mainstream statistics predict that, if things do not change, the numbers of Aboriginal peoples involved in all areas of justice will also increase in proportion to the representation of Aboriginal peoples in Saskatchewan in general. But such predictions are based on historical trends in the Aboriginal population (from 1996 to 2001, for example) that are unlikely to be repeated given the extensive community healing initiatives, enhanced community capacity and infrastructure, documented increases in education and labour force participation, and marked increases in economic development both on and off-reserve and in public and private partnerships.

More extensive and meaningful Aboriginal participation in research, data collection, and service provision continues to be a pressing need. To date, mainstream data has been typically provided by bureaucrats and justice workers and not by Aboriginal peoples themselves. This is problematic for, as Morgan (1997) aptly points out, "as we become increasingly subject to administration through rules and engage in strict calculations relating means and ends and costs and benefits, we [may] become increasingly dominated by the process itself." As a consequence, the "over-represented" Aboriginal participation in the justice system in Saskatchewan has been produced by the process and analysis of Aboriginal justice itself. The question that Morgan (1997) and others might ask about the rational analysis of the population and justice statistics is "*Rational for Whom?*" Morgan (1997) would argue that those involved in the analysis of Aboriginal "over-representation" in the justice system and the creation of policy

to "deal" with this situation are rationalizing and clarifying for themselves their place and role in the process—in other words, they are rationalizing extended over-investment in the justice industry of which they are beneficiaries.

Meanwhile, many of the data collectors and policy-makers remain well-intentioned and are convinced that their statistics are neutral and objective records of the "truth," after all! Inevitably, however, the clarification and dissemination of the rational "facts" comes with damaging generalization and simplification, and the omission of valid information relevant to marginalized interests.

In addressing entrenched patterns of data collection and analysis, public and policy-makers need to understand that, out of context, the numbers do not do justice to the lived reality or the systemic barriers faced by First Nations and Metis people in Saskatchewan. Mainstream demographic representations continue to obscure the rich resources, the capacities, successes, and achievements of Aboriginal adults and youth. Policy makers must draw on qualitative as well as quantitative measures, and include multiple categories of identity wherever possible (age, gender, abilities, education, etc.) in order to highlight some key factors that can direct us to areas for and means of change.

Public and policy-makers might understand too that those advocating Aboriginal self-determination inside and outside the justice system are not necessarily arguing for separate and distinct institutions and jurisdictions. It is not a question of either/or, winners or losers, but of how we all stand to gain from institutions in which all members of the population have a say. Effective policies must begin with extensive Aboriginal participation and definition of what counts as evidence. A cost-benefit analysis from this perspective would advocate and argue the costs and benefits valued by the Aboriginal community and valuable for all communities in Saskatchewan.

The future course of events for Aboriginal peoples involved in the Canadian justice system is not pre-determined by historical trends or the "current situation." For example, the potential increase in the number of Aboriginal peoples incarcerated in provincial corrections will decrease if programs are developed to better meet the needs of those youth affected by FASD. Programs such as the Peacekeepers Program that attend to the social, physical, mental, emotional and cultural needs of Aboriginal youth at greater risk will lead youth in the direction of education rather than crime, of career development rather than a life behind bars. Adults in the federal corrections facilities empowered to develop businesses and entrepreneurial skills might teach newer and younger inmates how to create for themselves a different version of their own futures. An increased emphasis on Aboriginal education and labour force development initiatives will create, promote, and maintain healthy and sustainable alternatives to participation in the justice system. Otherwise we will continue to invest in prisons rather than people, $80 million for a 450 bed medium-security prison or $6.6 million for a 40-bed healing lodge (Krause, 2003). Or might such sums be better invested in education, health, housing, and career development?

We can with proactive and preventative measures, investments in collective, community solutions and alternative measures move beyond the adversarial and punitive to recognize and act on the value of education, community capacity-building, or programs for youth and inmates in making policy decisions. Then we might build just and sustainable communities that have a place for the values, knowledge, and experience of all of us and reduce excessive costs to address social breakdown. The seventh generation cannot afford the social or financial consequences of the status quo.

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