

ABORIGINAL PEOPLES OF THE NORTH AND CRIMINAL JUSTICE  
A Background Paper for the Royal Commission on Aboriginal Peoples

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February 1993

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## ABORIGINAL PEOPLES OF THE NORTH AND CRIMINAL JUSTICE

### A Background Paper for the Royal Commission on Aboriginal Peoples

#### INTRODUCTION

In recent years, there has been an increased focus on issues surrounding the delivery of justice services in the Canadian North. Aboriginal peoples have expressed concern about the high rates crime in many of the communities and the extensive involvement of Aboriginals in the criminal justice system. The federal and territorial governments have been under mounting pressure to support the development of alternative, community-based justice programs and services which, it is argued, will more adequately address the needs of Aboriginal victims, offenders, and communities while at the same time reducing the dependency of Aboriginal peoples on the Canadian criminal justice system. Concurrently, the activities of the criminal justice system, including the RCMP, the criminal courts, and corrections systems, have come under increasing scrutiny.

The materials presented in this paper come from a myriad of sources including unpublished Ph.D and M.A. theses, government reports, commissions of inquiry, accounts compiled by individuals involved in the administration of justice, and research studies conducted by scholars from a variety of disciplines. Much of the research and writing on Northern crime and criminal justice issues is 'unpublished' and has received only limited distribution, often making it inaccessible to students, scholars, Aboriginal indigenous communities and organizations and government agencies and ministries.<sup>1</sup>

At the outset, several caveats are in order. First, while there is an extensive literature which addresses various aspects of Northern life, much of it is based on impressionistic, ethnocentric tainted accounts provided by Euro-Canadian colonizers - explorers, fur traders, missionaries, officers of the Royal Canadian Mounted Police and members of the judiciary. Harring (1989:38) notes, for example, that many of the observations of the early anthropologists such as Diamond Jenness (1922) are tainted by ethnocentrism: "Jenness' rich ethnographic descriptions are very valuable, but his ethnocentrism cautions us in our interpretation of his evidence."

Second, Millar (1990) has pointed out that much of the literature on the administration of justice in the North is anecdotal and comprised of first person accounts by non-Aboriginal criminal justice personnel (c.f. Sissons, 1968; Tallis, 1980). These accounts generally lack supporting empirical evidence and are often impressionistic in nature.

There is some question as to whether the information presented provides accurate insights into the administration of justice in the North, or merely reflects the perceptions of non-Aboriginal persons, the majority of whom live in the larger population centres. This applies as well to the findings of scholarly research studies which have been largely produced by non-Aboriginal consultants and research scholars from "southern" universities and government ministries.

A third limitation of the available materials, particularly research studies conducted on the administration of justice in

the North, has been the failure to include the perceptions and perspectives of Northerners regarding crime and the delivery of criminal justice services.

While beyond the scope of this discussion, it is important to note that the administration of justice in the Canadian North cannot be examined in isolation from the historical context, the cultural attributes of Aboriginal peoples, the economic and social changes which have impacted the North, and the dynamics of community life. All of these factors have played a role in the patterns of crime which exist in the North and in the arrangements which have been created for the administration of justice. In addition, the role and potential impact of political developments, including the increasing move toward self-determination and self-government by Aboriginal peoples, the creation of new political entities such as Nunavut, and the revitalization which many Aboriginal communities are experiencing must be considered. As a recent report of the N.W.T. Corrections Service Division (1991:4) notes: "Differentiating between the attractiveness of justice as an abstract concept and the dreariness of justice as an operational concern often occurs at the community level. Indeed, local control of justice related matters is often perceived by national and community leaders as the jewel in the self-determination crown."

#### **THE CANADIAN NORTH**

For purposes of this background paper, the term "North" will be used to denote the jurisdictions of the Yukon and the

Northwest Territories. It should be noted, however, that many of the issues surrounding Aboriginal peoples and the administration of justice in these jurisdictions are similar to those in the northern regions of the provinces as well as Labrador.

A full understanding of the issues surrounding the administration of justice in the North has been hindered by the fact that the region and its inhabitants are generally invisible to the majority of Canadian who reside in southern, urban areas of the country. Few Canadians, including many involved in the design of criminal justice policy and programs, have had the opportunity to travel north of the 60th parallel. Visits to Northern communities, when they do occur, are often of limited duration.

There are several important points which must be made prior to beginning the discussion: First, the administration of justice in the Canadian North occurs in a diversity of settings. In addition, there are key differences between the Northern jurisdictions which impact the patterns of crime, the arrangements for the delivery of justice services, and the involvement of Aboriginal communities in the administration of justice. Second, a common assumption is that Northerner = Aboriginal person. While a high percentage of the population in Northern Canada is comprised of Native Indian, Metis, and Inuit peoples, there are also large numbers of non-Aboriginals, particularly in the Yukon. There is also a "rural-urban" dichotomy in the North, with the larger population centres of

Whitehorse, Yellowknife and Iqaluit being quite distinct from the more remote communities.

### **Differences Between Northern Jurisdictions**

The Yukon Territory and the Northwest Territories differ in their land area, their population structure, and in the accessibility of their communities. In addition, they have experienced different patterns of development historically and during contemporary times (See Dickerson, 1992).

The diversity of geography and population and the variety of cultural groups that are found across the North has a potentially significant impact on the patterns of crime and on the delivery of justice services, as well as the relevance of justice policies and programs. There is also is considerable variability in the patterns of crime, in the arrangements for the delivery of justice services, and in the extent to which individual communities are involved in community-based justice initiatives.

The N.W.T. has a population of 53,000 residents, residing in 64 communities, dispersed across four time zones and nearly 3 million kilometers. Approximately 17% of the population is Dene, 38% are Inuit, 7% Metis, and the remainder are non-Aboriginal. The majority of N.W.T. residents (62%) are Aboriginal and they live in communities of under 750 population. A large number of N.W.T. residents do not speak or understand English. Currently administered from the territorial capital of Yellowknife, the Eastern Arctic is quite isolated administratively from its western counterpart.

Virtually all of the 64 communities, with the exception of those centered around Great Slave Lake, are accessible only by air or, for a few months of the year, sea. The vast distances between and relative isolation of the communities of the N.W.T. have significantly influenced the delivery of justice services while at the same time providing opportunities for the development of alternative, community-based justice services and programs.

The Yukon Territory has a population of approximately 23,000 inhabitants, one-third of whom are Aboriginal. Whitehorse, the territorial capital, has a population of nearly 13,000. With the exception of Old Crow, all communities in the Yukon Territory are accessible by road. The Yukon (at 531,843 km<sup>2</sup>) comprises a much smaller land area than the N.W.T. (at 3,246,389 km<sup>2</sup>) (Statistics Canada, 1992a; 1992b). Throughout the Yukon, there are Aboriginal peoples representing seven different cultural groupings and grouped into 14 different bands (LaPrairie, 1992). In addition to large populations of Inuit and Metis, there are six different cultural groups of Native Indians in the N.W.T. (Wonders, 1987). The N.W.T. has a greater degree of cultural diversity than does the Yukon and also has a larger proportion of Aboriginal peoples (62%) than the Yukon (21%) (Department of Indian and Northern Affairs, 1989).<sup>2</sup>

#### **PATTERNS OF NORTHERN CRIME**

A definitive discussion of crime patterns and the involvement of Aboriginal persons in the criminal justice system



is precluded by the lack of published statistical information and by the usual limitations of the official statistics which do exist. With a few exceptions (c.f. Griffiths, et al., 1992), there have been no systematic inquiries into the patterns of crime and the involvement of Aboriginal peoples in the criminal justice systems in the North.

There are no readily available data on community variations in crime patterns, the distribution of various categories of offences across the North, or on the profiles of Aboriginal persons who become involved with the criminal justice system. There is also a lack of field studies which consider the patterns of crime between Northern communities, the delivery of justice services to Aboriginal residents, and the perceptions of Aboriginal persons about crime and the administration of justice.

Despite this, it is possible to delineate several *general attributes* of crime in the Canadian North, including:

1. *in many Northern communities, there are high rates of violent and property crime.* Official statistics indicate that the N.W.T. and Yukon Territory have consistently reported the highest rates of Criminal Code violations, crimes of violence and property offences in Canada (See Table 1). Violence, particularly spousal assault, is a predominant feature of life in many communities. The role of alcohol in crime, while pervasive, is not uniform across the communities. Many communities successfully manage alcohol use, while others have few effective controls on alcohol use and alcohol-related behaviour.

2. *there is wide variation in the patterns of crime across Northern communities, even within the same region.* This variation appears to be due, in large measure, to events which have impacted the communities historically, e.g. resettlement, and in contemporary times, and to the dynamics of community life. There is some evidence to suggest that in communities where there is a strong sense of communality, the persistence of traditional lifeways, and a desire to use

internal rather than external controls over behaviour, there are lower rates of crime.

3. communities differ in the demands that they place on justice and social service personnel and in the expectations they have of outside agencies such as the circuit court. In some communities, there is a high degree of dependence upon outside justice, social service, and other government personnel to intervene and "solve" community problems. In others, residents perceive the solutions to conflict and trouble to lie within the community itself. Communities differ in the "personal" and "community" resources which they can mobilize to prevent and respond to crime.

4. there is concern on the part of community leaders and residents, as well as criminal justice and social service practitioners, as to the adequacy of services for the victims of crime, particularly young girls and women who are the victims of sexual abuse and violence. This discussion paper will highlight the increasing attention which issues related to violence, spousal and sexual assault are receiving by both governments and Aboriginal peoples in the North. In addition to a lack of research on the etiology of violence among Aboriginal peoples of the North, there is a paucity of community resources and government-sponsored facilities and programs. The remoteness of many Northern communities presents unique challenges to both communities and the criminal justice system to develop programs which provide protection for the victims of violent crime, while at the same time offering offenders the opportunity to participate in culturally-relevant treatment programs.

5. in many communities, a relatively small number of individuals are responsible for a large amount of criminal activity. At the core of the high crime rates in the communities in the North are the criminal actions of a relatively small number of recidivists. In many communities, there is small group of offenders who are responsible for a majority of offences. In the Yukon, for example, there is a high turnover of inmates in the Whitehorse Correctional Centre and it is generally the same inmates who are returning to the institution (LaPrairie, 1992).

Any attempt to understand the patterns of crime and the involvement of Aboriginal peoples in the criminal justice system must consider both the historical development of the North and the contemporary circumstance of Northern communities and their residents. There appears to be a close relationship between the

conditions of socioeconomic deprivation in which many Aboriginal peoples live, the culturally-destructive policies that successive federal governments have imposed on Aboriginal peoples historically and during contemporary times, and their patterns of conflict with the law. In addition, many Northern communities are beset by other types of "trouble", including widespread alcohol and drug abuse, suicide, family disintegration and other symptoms of community breakdown and cultural disintegration.

Table 1

Rate per 100,000 Population of Actual Number of Violent, Property, and Total Criminal Code Offences in the North and in Canada, 1991.

	Violent	Property	Criminal Code
N.W.T.	5983	9435	30011
Yukon	3116	8955	21342
Canada, Total	1087	6326	10620

**SOURCE:** Canadian Centre for Justice Statistics. 1992. *Final Crime Statistics, 1991*. Ottawa, Ont.: Canadian Centre for Justice Statistics.

#### THE CANADIAN NORTH: COLONIZATION AND CONFLICT

There is little doubt that the high rates of property and personal crimes as well as the extensive abuse of alcohol and other difficulties which afflict many Northern communities are one legacy of the colonization of the North and its peoples by Euro-Canadians. Despite the relative isolation of Canada's Northern peoples, they were not spared from federal government

policies which significantly altered their patterns of life and, in many instances, resulted in their removal from traditional land use areas to artificial settlements (see Richling, 1985; Marcus, 1990; 1991).

The introduction of Euro-Canadian culture resulted in overwhelming change in Aboriginal culture (see Adamyk, 1987; Anderson, 1971; Brody, 1977; Hodgkinson, 1972; Honigmann and Honigmann, 1965; Sammons, 1985; van Dyke, 1982; Wenzel, 1985; Whyte, 1976; Zaslow, 1984). Kellough (1980), Paine (1977a), Rea (1968) and Tobias (1976) have argued that the relationship between the federal government and Aboriginal peoples in the Canadian North can best be understood from a majority/minority or colonial perspective. These observers contend that the colonization of the Canadian North has been an intentional, long-term process which has involved replacing the traditional, self-determinant lifestyle of the people with a dependent and subordinate status.

Crowe (1974), Minor (1979), Swiderski (1985) and Zaslow (1971), among others, have documented the role played by the whalers, missionaries, fur traders and government officials as agents of change in the Westernization process (see also Coates, 1985; Coates and Powell, 1989; Coates and Morrison, 1988). Through this process, Aboriginal cultures were displaced and many Aboriginal peoples and communities were swept into resignation and dependency (Irwin, 1988). Van Dyke (1982) and Zaslow (1984) note that the introduction of Euro-Canadian culture resulted in rapid and overwhelming change in the cultures of Aboriginal

people. This, in turn, created widespread cultural shock and anomie at both the community and individual levels (see also Pretes, 1988). van den Berghe (1981:175) has argued that it is possible to view the Inuit as "conquered micro-nations, engulfed in a large, neo-European representative government that treats them as a micro-colonial empire." From this perspective, the Yukon and the Northwest Territories are viewed as Northern colonies in which the population is largely dependent upon the federal government (Paine, 1977b).

As noted, one consequence of the colonization process has been the increasing dependence of Northern Aboriginal peoples on government. Government agencies provide medical services, education, and criminal justice and social services, tasks previously carried out by communities and families. Shamanism has been largely eradicated, the family structure and networks are now often centered on Euro-Canadian style nuclear families; elders are often spatially separated by the provision of single-family housing; and modern schools have replaced the oral traditions and apprenticeship-style child rearing practices (see Coates, 1985; Coates and Morrison, 1988; Coates and Powell, 1989; Dacks, 1981; Dacks and Coates, 1988; Rea, 1968; 1976; Zaslow, 1984). In the words of one criminal justice official in the N.W.T., "the provision of services creates dependency, which, in turn, creates a demand for more services. This perpetuates the dependency of communities and their residents." (Personal communication).

The federal government's policy of resettlement played a significant role in culture breakdown and community disintegration. Noting the impact of resettlement on the Inuit in Labrador and its contribution to the socio-structural dependency of the people in that jurisdiction, Richling (1985:348) has argued that resettlement:

uproots people from their homes and livelihoods, and denies them a voice in determining their future. . . . Planners justify their recommendations by declaring such a change to be good for people . . . that new housing and other amenities at the new site compensate for the loss of customary occupations, social arrangements or elements of traditional culture. Cultural intangibles ordinarily find no place in the calculus of development.

The plight of the Innu people in Davis Inlet, Labrador is illustrative of the consequences of resettlement. In 1993, following a massive suicide attempt by six Innu youth, the federal government acceded to long-standing Innu demands to be relocated. And, in recent years, there has been an increased focus on the circumstances surrounding the relocation of Inuit to what are now the communities of Grise Fiord and Resolute Bay (see Gunther, 1992; Hickling Corporation, 1990; Marcus, 1990; 1991).

#### **THE IMPOSITION OF EURO-CANADIAN LAW ON THE NORTH AND ITS PEOPLES**

With the arrival of the *Qallunaat* whalers, trappers, and missionaries, governments sought to establish sovereignty and control over the North and its people (see Grant, 1988). The imposition of Euro-Canadian culture had a significant impact on traditional Aboriginal systems of social control. Brad Morse (1983), has identified four possible outcomes when two legal

systems come into contact with one another: a) *total avoidance*, whereby the two systems of law function separately, with neither assuming jurisdiction over the other; b) *co-operation*, under which the two systems function side-by-side with clearly defined jurisdictional boundaries; c) *incorporation*, whereby one society dominates the other to the extent that certain elements of the other's law that do not fundamentally conflict with its own are adopted; and d) *rejection*, which involved the outright rejection of the indigenous legal system by the dominant government.

Historically, the position of the federal government in relation to Aboriginal peoples and the legal system can be characterized as one of 'total rejection.' The policy of the Canadian government has been "one land, one law" and this has been the guiding principle of the Canadian legal system and the administration of justice. In *British Law and Arctic Men*, Moyles (1989) documents the landmark case of two men who were the first Inuit charged with crimes under Canadian law. During two jury trials that occurred in this case, issues related to the relevance and applicability of "outside" law to Aboriginal accused were raised which are still being debated today. Harring (1989), uses the term "legal imperialism" to depict the process by which Canadian law was imposed on the Copper Inuit during the early decades of the 1900s. The principle established in these and other early criminal cases was that the Canadian criminal law applied to all Canadians, including Aboriginal persons. The legitimacy of traditional systems of social control among the Aboriginal peoples was rejected. Several scholars have examined

the role of the Royal Canadian Mounted Police in establishing Canadian sovereignty over the North (see MacLeod, 1972; 1976a; 1976b; Morrison, 1973; 1985; Stone, 1979; 1989). In both the Yukon and the N.W.T. the RCMP were the government. The role of the Hudson's Bay Company in the administration of criminal justice in the North, while significant, has remained largely unexplored (see Foster, 1989).

Numerous observers have recorded the events surrounding the development of the system of criminal courts in the Canadian north (see Reynolds, 1978; Ward, 1966; Price, 1986). Perhaps the most well known and oft-cited work is *Judge of the Far North: The Memoirs of Jack Sissons* (1968), the first resident magistrate in the N.W.T. in the 1950's and several contributions by Morrow (1965; 1967; 1970; 1981) which examine the application of the criminal law to Aboriginal peoples in the N.W.T.

There has been among anthropologists, legal scholars and others a great interest in the role of law in societies and the relationships between legal systems and the social, political and cultural context in which they operate. Allott and Woodman (1985), Bohannan (1965), Hoebel (1954), and Nader and Todd (1978) have explored the interface between traditional systems of social control and codified, Western-style legal systems. Concerns have been raised about the effectiveness of Western-style adversarial systems of criminal justice, particularly where these systems have been "imposed" on cultures which traditionally utilized mediation, negotiation and other forms of dispute resolution (see Patenaude, 1989).



There are several major points of divergence between traditional Aboriginal systems of social control and the principles of the Canadian system of law. A major premise of the Canadian legal system is that any violation of the *Criminal Code* is an offence against the State and the State, rather than the offended party, has the right to impose sanctions. These sanctions are imposed through an adversarial process in which an attempt is made to establish the guilt of the offender. This system of "winners" and "losers" is in sharp contrast to the systems of customary law, which are based on the principle of the least amount of interference with the rights of the individual and which have, as a primary objective, not a determination of guilty and the imposition of punishment, but the restoration of peace and harmony within the group. To Inuit, for example, the concepts of *ayunnarmut* or "it can't be helped:", "the moment (not later) and prestige-gathering/maintenance (loss of face) were the cornerstones of action. The most common individual transgressions involved insults, theft of women, failing to provide or share food, witchcraft, and murder. These offences were responded to by such methods as gossip, derision, shunning, banishment, or execution which were highly effective in sanctioning offenders and maintaining the cohesion of the group (see Carswell, 1984; Graburn, 1969; Hoebel, 1967; Pospisil, 1964; van den Steenhoven, 1955; 1959). The formal trappings of the Euro-Canadian system of justice were unknown to Aboriginal peoples who had well-developed systems for resolving disputes and punishing offenders (see Jefferson, 1983). A number of community

studies have been completed which provide insights into traditional structures of social control in the North, including Rasing's (1984; 1989) study of traditional law and social control in Igloolik, N.W.T., Patenaude's (1987) study of Cape Dorset, and Finkler's (1975) studies of Iqaluit, (formerly known as Frobisher Bay) (see also Condon, 1987).

#### **CURRENT JUSTICE SERVICE DELIVERY ARRANGEMENTS IN THE NORTH**

##### **Policing in the North**

Policing in the Yukon is the sole responsibility of the RCMP which has a total of 99 officers posted to 13 detachments throughout the territory. In 1993, thirteen of these officers were Aboriginal. There is a minimum of two members in each detachment. Nearly all of the communities in the N.W.T. have resident RCMP officers, many of whom police in one or two officer detachments.

The police are generally the one permanent representative of the criminal justice system in northern communities. Loree (1985:8) describes the precarious nature of policing in Aboriginal communities:

The police officer working in a Native community is frequently caught in the middle; as marginal in his role as are many Native people to the dominant society. Each exists and attempts to function in the grey area between the more traditional, non-European norms, values and organizations of the Native community and law, customs, and structures. The police officer . . . is a readily available and highly visible symbol of government failure, misunderstandings, and broken promises.

Given the small size of most Northern communities, the role of the police assumes even greater significance than in the more

populated areas of the south. The personal "style" of the police officer(s) in small RCMP detachments and the relations that exist between the police and the community will have a significant impact on the rates of arrest and charging, as well as on the success of any community-based initiatives designed to prevent or reduce crime and trouble. To be effective, police officers must adapt their role to fit the needs of the community in which they are posted.

### **The Northern Courts**

There are three levels of courts in the N.W.T.: the Supreme Court of the N.W.T., which is comprised of the Court of Appeal and the Supreme Court; the Territorial Court; and the Justices of the Peace. The Court of Appeal is somewhat unique in that it is composed of Chief Justice of Alberta, the three resident Justice of the Supreme Court in the N.W.T. and the resident Justice of the Supreme Court of the Yukon, the other Justices of the Alberta Court of Appeal, and designated Justices of Appeal from Saskatchewan. This means that judges from outside the N.W.T., many of whom may have not travelled extensively throughout the territories and who may have little knowledge of Aboriginal cultures and communities, are involved in hearing cases on appeal. The Yukon has a similar court structure, with a Supreme Court, Territorial Court, Court of Appeal, and Justices of the Peace.

A predominant feature of Northern jurisdictions is the circuit courts which were introduced into the N.W.T. during the

1950s. In the words of Mr. Justice Jack H. Sissons, the first circuit court judge in the N.W.T., the purpose of the circuit court was to "bring justice to everyman's door." Outside of the larger population centres, judicial services outside of the larger population centres are provided by a system of circuit courts. Comprised of a Territorial or Supreme Court judge, court clerk, court reporter, defence lawyer, Crown counsel, and often, a legal interpreter, the circuit courts travel to communities by plane (or, in the Yukon, by car) on a regular basis. Many communities are served monthly but others are visited only once every three months or more infrequently if there are no cases to be heard or if weather or mechanical problems with the court plane prevent a scheduled visit.

#### **Yukon Legal Services Society**

The Yukon Territorial Legal Services Society is responsible for the provision of legal aid to indigent persons in the Yukon. The Legal Services Society arranges for private lawyers to represent defendants in criminal proceedings where there is a possibility that the accused may have to serve an incarceration sentence. The only other cases in which legal aid is provided are urgent family court proceedings where children are involved. No legal aid is provided to indigent citizens for civil court cases involving unemployment insurance, social assistance, or workers compensation.

**N.W.T. Legal Services**

In the N.W.T., the Legal Services Board ensures the provision of legal services to all eligible persons and is also involved in developing regional and local programs designed to provide community residents with information about the law and the administration of justice. To meet these objectives the Legal Services Board operates a number of regional legal services committees. These include Mackenzie Court Workers Services (covering the Fort Smith and Kitkmeot regions and the communities west of an including Inuvik in the Inuvik region); Maliganik Tukisiniakvik in the Baffin Region; Arctic Rim Law Centre Society (in the Inuvik region for communities located east of Inuvik); and Keewatin Legal Aid Services (in the Keewatin region). In addition, the Legal Services Board serves as the carrier agency for Arctic Legal Education and Information Society (Arctic PLEI).

**Yukon Corrections**

The Whitehorse Correctional Centre, opened in 1967, is currently the only correctional facility for male and female offenders in the Yukon. While the facility has a rated capacity of 52 inmates, on average, there are 90 to 110 offenders incarcerated in the institution. Most correctional programming at the Correctional centre is oriented toward Aboriginal inmates because the majority of inmates (about 80 percent) are from the Yukon's First Nations. In addition to basic educational, vocational and life skills programs, culturally-specific programs offered at the Whitehorse Correctional Centre include the New

Beginnings alcohol and drug counseling program, a traditional medicine program, a sweat lodge, and counseling from First Nations elders.

A particularly innovative program operated by the Corrections Branch is the roving Yukon Work Camp, established in 1978. The program operates from May through October and is located in a different Yukon community each year. It offers 16 inmates from the Whitehorse Correctional Centre an opportunity to provide community service to the settlement in which the work camp is located. Work camp inmates participate in community cleanup activities and do some construction and landscaping as well. The work camp provides an opportunity for inmates to develop occupational skills as well as to gain a sense of giving something back to the community. There are high levels of support for the work camp program at the community level.

Probation services in the Yukon are also the responsibility of the Corrections Branch. In addition to the probation officers in Whitehorse, two probation officers serve outlying communities. Unlike the social workers of the N.W.T., probation officers in the Yukon are totally devoted to probation work. Besides their probation case-loads, probation officers in the Yukon are responsible for filing bail assessments and pre-sentencing reports. Recently, probation contracts have been entered into with some Yukon First Nations whereby probation services are operated at a local community level.

### **Yukon Family Violence Prevention Unit**

The Yukon Family Violence Prevention Unit is operated by the Yukon Corrections Branch. Its primary objective is to assist offenders convicted of spousal assault and sexual abuse (LaPrairie, 1992). Most offenders being served by the Family Violence Prevention Unit are referred to it as a condition of probation. Group sessions of confrontational therapy are provided over a 10 week program which includes a follow-up component well. The therapy is intended to de-normalize violent behaviour in the offender. For the most part, only offenders from the Whitehorse area are involved in the program, although there are plans to deliver the program to outlying communities at some future date. Counselling services for victims are also offered by the Family Violence Prevention Unit.

### **Yukon Youth Corrections**

Under the direction of the Director of Child Welfare, Yukon Youth Services provides justice services to all youths sentenced under the *Young Offenders Act*. Open and secure custody facilities for youth are located in Whitehorse. Wilderness programs for youths are operated near Ross River (the Kaska Wilderness Program) and Old Crow (the Chuu - ttha' Youth Healing Camp), and a summer wilderness camp near Mayo. Youth probation and alternative measures programs are also provided by Yukon Youth Services. In the outlying communities, these services are delivered by community social workers.

**N.W.T. Corrections**

Correctional centres for male offenders are located in Yellowknife, Hay River, and Iqaluit, while female inmates are housed in a facility in Fort Smith. The creation of small correctional institutions across the territory was designed to reduce the cultural dislocation experienced by Dene and Inuit offenders who, in the past, served their sentences in Yellowknife (Patenaude, Wood, and Griffiths, 1992). Particular difficulties are encountered by Aboriginal women, however, as the only facility is in the Western Arctic. All of the centres attempt to provide culturally relevant programs to their inmate populations.

The Yellowknife Correctional Centre opened in 1967 with a rated capacity of 72 inmates. It was remodelled in 1988 to serve the N.W.T. as a secure custodial facility. The average daily inmate count is 125 inmates. This general security or multi-level institution holds minimum, medium, and maximum security inmates as well as maximum security accused who have been remanded into custody to await trial.

The majority of correctional programs and services operated by Yellowknife Correctional Centre are institutionally rather than individually oriented. The centre has within the last five years removed its protective custody program and integrated these offenders into the general population. It offers a wide range of vocational, educational, recreational, and light medical services to inmates incarcerated there.

The South MacKenzie Correctional Centre in Hay River, opened in 1973, is a minimum-security institution for 35 male and female



inmates. With the exception of some institutional maintenance programs, the centre's programs are community-oriented. To strike a balance between the concepts of resocialization and self-sufficiency, the South MacKenzie Correctional Centre operates a commercial fishing venture and the Land Program. These programs are self-sufficient with surplus funds placed into the inmate trust fund and welfare accounts.

The Baffin Correctional Centre is located in Iqaluit on Baffin Island. The Inuktitut name for the facility, *Ikajuratuviik* means "a place to get help." The facility was opened in 1974 to serve the needs of Inuit inmates from Eastern and High Arctic settlements. The Baffin Correctional Centre is a uniquely organized and operated correctional facility. It is a general purpose or multi-level facility in terms of security and inmate programming. In terms of staffing and program orientation, the Baffin Correctional Centre is multi-cultural. Major programs in the institution are centered around the traditional hunting and fishing lifestyle of the Inuit of the region (see Finkler, 1982a; 1982b; 1985a; 1985b).

The Baffin Correctional Centre is the only correctional facility in the world in which inmates may regularly handle loaded firearms (Patenaude, et al., 1992). Under the Land Program, inmates leave the centre under the supervision of an Inuit staff member and hunt for seal, walrus, caribou, whale, or arctic hare, depending upon the season. A majority of the game harvest is donated to elders or other infirm residents in the community, while a small portion is prepared by the kitchen

staff. Any concerns that community residents may have about the Land Program are alleviated by the community service projects carried out by the inmates, including Spring clean-up, the digging of graves, construction of coffins, and assisting non-profit organizations.

The N.W.T. Correctional Centre for Women is located in Fort Smith. It originally opened in 1977, closed during 1986, and reopened in 1991. This centre has educational and vocational programs which include life skills, basic home-making skills, and hygiene programs. Some substance abuse programming is also done at the N.W.T. Correctional Centre for Women.

Community corrections is also the responsibility of the Territorial Department of Justice. A wide variety of non-incarcerative dispositions are utilized including probation, fine-options, restitution, community service, and community residential centres. Post-incarceration services, including parole supervision and after-care are also provided by the N.W.T. Department of Justice. In the communities, both the non-incarcerative dispositions and post-incarceration services are supervised by social workers from the N.W.T. Department of Social Services.

#### **N.W.T. Youth Corrections**

As with adult corrections in the N.W.T., correctional facilities and services for Young Offenders are located throughout the territory. Secure custody facilities are located in Iqaluit for young offenders in the east, and in Fort Smith and Hay River for young offenders in the west. Open custody

facilities are located in Iqaluit, Pond Inlet, Yellowknife, and Inuvik. Bush camps are also operated throughout the territory. Youth probation and community correction services are offered by the N.W.T. Department of Social Services; in most communities community social workers provide these services.

#### **ISSUES IN THE ADMINISTRATION OF JUSTICE IN THE NORTH**

The issues surrounding the administration of justice in the North and the devolution of justice services to the communities are complex. There are often contradictory positions adopted by communities in terms of desiring more resources from the existing justice system, while at the same time seeking more localized programs and services:

This is a society in transition, and one of the manifestations of that are what appear to be contradictory demands. More RCMP and better access to lawyers are wanted, at the same time as the authority of Canadian justice system, and the basis for Canadian laws, are questioned. This is a natural consequence of a system having been imposed and administered by outsiders to the community for most of the lifetime of most of those alive today (Department of Justice, G.N.W.T., 1991:6).

The following discussion highlights important issues surrounding the administration of justice in the North.

#### **Policing**

In an extensive analysis of police-Aboriginal relations in Yukon, Parnell (1979) conducted interviews with RCMP officers, Aboriginal community members and with resource persons (probation officers, social workers, community officials, and nurses) in five communities. Parnell (1979:6) found that, while the officers in the communities tended to describe relations with

Aboriginal peoples as "good" or "very good", Aboriginals tended to characterize relations with the police as "fair" and the resource persons depicted Aboriginal-police relations as "serious." A primary determinant of the quality of Aboriginal-police relations was the age, experience, and personal style of the individual police officer. Aboriginal persons surveyed by Parnell (1979) held more positive views of older, more experienced officers, who were perceived viewed by residents as exercising their discretion appropriately and as making a greater effort to become involved in community activities. There were problems, however, with younger RCMP officers, who "tended to be cocky and aggressive" in carrying out their tasks (Parnell, 1979:21).

A major complaint of Aboriginal persons in several Yukon communities was that the crime control, enforcement orientation of many police officers was inappropriate for addressing community needs and was not conducive to positive police-community relations. Relations had improved in those communities where officers had become involved in non-policing activities in the community and focused more on human relations. One of Parnell's (1979:42) major conclusions was that a change was required in the criteria for evaluating and promoting RCMP officers, particularly those policing Northern communities, and that the criteria "should involve more stress on qualities favouring education and communication skills and the ability to develop positive working relationships with the public."

Another factor which may affect police-Aboriginal relations is the level of knowledge that officers have of the communities and peoples they are policing. The majority of officers interviewed by Griffiths et al (1992) in the Baffin Region stated that more training was required prior to officers being posted to the North. The responses of officers to questions relating to their initial impressions and subsequent experiences in the Baffin Region communities suggested that they were often ill-prepared for their assignments, knew little of Inuit culture and language, and had little understanding of Inuit community life. Further, the transfer policy of the RCMP often served to hinder the development of positive officer-community relationships.

So too may there be a lack of knowledge among Aboriginal peoples, particularly in relation to their legal rights and in the extent to which they understand the criminal justice process. In the Parnell (1979) study, nearly 90% of the Aboriginal persons interviewed stated that they needed more information about the law, and 55% indicated that they desired more information about their legal rights.

It should be noted that Parnell's (1979) study was completed over a decade ago and that there have been a number of initiatives since that time designed to improve police-community relations. The RCMP has moved to implement the principles of community policing which involve moving away from a focus on crime control/law enforcement activities. The findings of his study are, nevertheless, instructive and identify several potential problem areas in police-Aboriginal relations in

Northern communities. To date there have been no systematic inquiries into police-Aboriginal relations in the N.W.T., although current research underway by Griffiths, et al (1992) is examining all facets of policing in the Baffin Region, Eastern Arctic. Preliminary data from this study suggest that there appears to be high levels of support for the police among community residents.

As with other justice programs in the North, there is an ongoing devolution of policing services in the Yukon and some First Nations communities have expressed an interest in developing their own autonomous police services. There is the perception in many communities that community-based police forces would better serve the needs of community residents.

In order to facilitate changes in First Nations policing, the Territorial/First Nations Committee on First Nations Policing has been created. The committee is composed of Chiefs from four Yukon First Nations, representatives from the Yukon Department of Justice, and the community policing specialist from RCMP Division headquarters in Whitehorse. The purpose of the committee is to analyze the policing options available to Yukon First Nations and to consult with Yukon First Nations communities to document their justice-related concerns. These consultations are intended to allow the Yukon's First Nations' communities to define their own problems and to find practical solutions to them (Territorial/First Nations Committee on First Nations Policing, 1992).

There are three different options for community policing that are currently being examined by the Territorial/First Nations Committee on First Nations Policing for the Yukon: 1) independent First Nations police forces to be created in accordance with the Federal Solicitor General's *First Nations Policing Policy* (1992); 2) enhancing the services provided by the RCMP to Aboriginal peoples; and 3) maintenance of current RCMP services. Each Yukon First Nation community will ultimately decide which option they intend to pursue (Territorial/First Nations Committee on First Nations Policing, 1992).

#### **The Northern Courts and Sentencing**

The administration of justice by the criminal courts has been the subject of considerable debate and controversy for many years. More specifically, various commissions of inquiry and, more recently, a number of empirical research studies, have examined the decision making of the Northern judiciary and the potential role of the courts in the overrepresentation of Aboriginal people in the criminal justice system. Concerns have also been raised as to whether the provisions of the Canadian *Criminal Code* are relevant to the needs of Aboriginal communities, victims, and offenders (Crawford, 1985; Griffiths and Patenaude, 1988; 1990).

The circuit courts, in particular, have been a continual focus of attention. The structure and process of the circuit courts, the sentencing practices of circuit court judges, and the extent to which the circuit courts function to enhance or hinder community involvement and the development of community-based

justice alternatives are all issues which continue to receive attention. Much of the debate surrounding the circuit courts centres on the extent to which those involved in the delivery of criminal justice services, including Crown counsel, defence lawyers, and judges, consider the community and cultural settings in which they are carrying out their tasks (see Griffiths, 1985; Griffiths and Patenaude, 1988).

Critics of the circuit courts have argued that they are plagued by large court dockets resulting from the backlog of cases; that there are often time constraints on the circuit court party which preclude effective defence preparation and result in marathon court sessions, often lasting up to 12 hours; that there is a lack of proper interpretative services for Aboriginal accused, victims, and witnesses who may speak or understand little English; and that non-Aboriginal court personnel often have little understanding of Aboriginal culture and communities (see Griffiths, 1985). Several of these concerns are reflected in the comments of a defence lawyer (Sibbeston, 1985:1.6) in the N.W.T.:

While the general impression of the community is that some justice is done, there is often the feeling among the people that only a very small part of the event that brought the court into the community has been seen by the court and that the real story, all of the background of the case, has not been available to the judge. What was the relationship between the people involved in the incident? What was the effect of the incident on the community? Why did the person do what he did?

Several observers have argued that the judiciary in the North is becoming more sensitive to the need to tailor



dispositions to the offender and to the community in which the offender resides. Crawford (1985:8-9) notes, for example, that in the Northwest Territories "in as much as cultural factors rarely make a difference in a determination of guilt or innocence, they are always relevant and appear welcome in speaking to an appropriate sentence . . . the criminal law in the North has been prepared to adapt to the ways of the people who come before it." This is not a unanimous view, however. Millar (1990), in a study designed to determine the extent to which the courts in the N.W.T. accommodated extraordinary geographic and demographic requirements in sentencing in sexual assault cases, concluded that only in certain cases were these issues mentioned as reasons for judgement in the sentencing decisions of the judges.

The sensitivities surrounding the issue of violence in the North are reflected in the inquiry held into the conduct of a member of the N.W.T. judiciary following comments made to a newspaper reporter about the nature of violence against women in the North. The inquiry (Conrad, 1990), considered whether the judge should be removed from office for "misbehaviour" as defined under the Territorial Court Act of the N.W.T. The final report, totalling over 400 pages, found insufficient grounds for removal. It did, however, examine in detail the comments made to the reporter, their publication, as well as the judge's behaviour in cases involving sexual assault.

In a study of the sentences given in cases involving sexual offences during 1988-89 in Yukon, Pasquali (1991) found that

there was a lack of a "coherent legal, moral or empirical framework" which judges could use to arrive at appropriate sentences and, further, that "there is no consistency in the factors that are taken into account in mitigation and aggravation." There was also a lack of treatment resources available to the court and evidence that "when judges speculate about the effects of sexual assault, they are likely to minimize the impact of the assault or draw conclusions which are not supported by clinical or empirical findings."

A major problem which often confronts the judiciary in the North is the lack of community-based sentencing alternatives for convicted offenders, which often results in their removal from the community to correctional facilities hundreds of miles away. Judges are also confronted with situations in which the wishes of a community in a particular case conflict with the demands of the *Criminal Code*. Members of the judiciary must find ways to accommodate the interests of communities in assuming ownership over problems which arise, while at the same time insuring that the rights of victims and community residents are protected.

Crawford (1985), Lindsey-Peck (1985), Millar (1990) and others have examined sentencing practices in Northern courts in an attempt to ascertain the extent to which the criminal courts consider customary law and tradition in their sentencing practices. However, there is very little conclusive research data to either support or refute the criticisms of the circuit courts. Research conducted on the issue of case delay, for example, suggests that this may not, in fact, be a problem. In

an examination of the administration of justice in the Yukon, LaPrairie (1992:55) found that "convictions result in only about half the charges and more than one-half are stayed, withdrawn or otherwise disposed. Almost all charges are disposed of by the courts in less than three months, and the majority, on average, are disposed of at a single appearance."

Studies have also failed to provide support for the assertion that there are long delays in case processing in the N.W.T. A study of case processing during 1986 found that most cases were fully adjudicated in less than 3 months (Bourassa, 1988). For summary conviction offences the average time between charge and disposition for guilty pleas was 39 days and for not-guilty pleas, the average time was 88 days (Bourassa, 1988). For indictable offences, the average time between charge and final disposition for guilty pleas was 62 days and for not-guilty pleas it was 102 days (Bourassa, 1988). Case delay in the N.W.T. may have been further reduced after 1987, with the assignment of a Territorial Court judge to Iqaluit. This judge is responsible as well for the Baffin Region circuit court. Cases in the Baffin region had contributed significantly to case processing times prior to 1987.

### **Corrections**

Across the North, there are no correctional facilities for those offenders receiving a sentence of two years or more. These offenders, who are under the jurisdiction of the federal Correctional Service of Canada, are often confined in federal institutions in the provinces. Federal offenders from the Yukon

are generally sent to the Pacific Region of CSC in British Columbia, while offenders from the western N.W.T go to institutions in Alberta or Saskatchewan, and offenders from the eastern Arctic to institutions in Quebec. However, there are agreements between the Territorial governments and the Federal government for "prisoner exchanges" whereby Aboriginal offenders from the North having sentences greater than two years in length may serve their time in institutions that are closer to their home community (Patenaude, et al., 1992).

In an attempt to better address the needs of Aboriginal peoples, there has been over the past decade a rapid expansion of community-based corrections programs, including probation services, fine option programs, a volunteer probation officer program, and community service order and restitution programs. There has also been an increase in the number of contracts-for-services with community-based organizations, including the Native Friendship Centres, the Salvation Army, and band and hamlet councils to operate fine option programs as well as victim-offender reconciliation programs.

These and other initiatives are premised on the notion that community-operated programs of control and correction, utilizing non-adversarial approaches premised on Aboriginal culture, may be more effective in controlling criminal behaviour and addressing the needs of victims, offenders, and communities (Finkler, 1982c). Community service order and restitution programs, in particular, have been viewed as a way to integrate traditional

community values and customs into the delivery of justice services.

While there have been no controlled evaluations of the relative effectiveness of these initiatives, there is some evidence to suggest that success has been mixed. An early report by Jubinville (1971) commented on the difficulties of bringing "Southern" programs to the North and this issue was subsequently addressed by Britton (1973) and Finkler (1986). These observers identified the importance of encouraging the development of local programs and initiatives tailored to the specific needs of individual communities rather than imposing programs from the outside.

Griffiths and Patenaude (1990) note, however, that there are obstacles to the effective functioning of "localized" corrections programs. These include the dependence of many communities on outside government to initiate, fund, and support community corrections programs; the design and delivery of community service order and restitution programs by outside criminal justice agencies and personnel; and conflict between traditional Aboriginal notions of conflict resolution and those represented by community service order and restitution programs.

Community residents are generally not involved in the design and implementation of community service order and restitution programs, any more than their counterparts in the more urbanized, southern reaches of the country. The extent to which dependency acts as an obstacle to community initiatives is illustrated by the difficulties that are often encountered in securing the

interest and participation of residents unless remuneration is provided by the government. Residents are often unwilling to serve as volunteer probation officers and to supervise and counsel minimal-needs offenders or to serve on community advisory committees unless compensation is provided. Competition often exists among agencies to secure the services of "paid volunteers", and agencies unable or unwilling to provide an appropriate level of compensation often lose the services of residents to other committees. In considering this issue, Weafer (1986:91) notes: "One has to ask whether or not a program can be community-based without becoming too formalized or bureaucratic in the sense of salaries, organizational structure, accountability, and overall objectives."

Griffiths and Patenaude (1990) also point out that community service and restitution programs are administered by government agencies or by community representatives on behalf of the government, rather than being closely integrated into the traditional values and customs of the communities. The traditional Aboriginal applications of restitution, for example, were aimed at reparation to the injured party. For example, broken or lost equipment would be repaired or replaced by the person responsible for that condition. The victim was recompensed and order restored. The two involved parties would have face to face contact with each other. The modern application of restitution removes this contact and the state, in the form of the criminal courts, intervenes between the two parties. The offender is now ordered to pay restitution in the

form of cash to the clerk of the court for eventual repayment to the victim, rather than providing services directly to the victim.

There have been increased pressures upon federal, provincial and territorial governments to develop and implement policies which will function to reduce the high levels of conflict with the law experienced by many Northerners. As well, political pressures are mounting for governments to give indigenous peoples the legal authority to become more involved in designing and implementing community-based crime prevention and justice programs which, it is argued, may be more effective in addressing the needs of Northern communities, the victims of crime, and offenders. Following are some additional key issues in Northern Justice.

#### **Differences Between the Dispensers and the Recipients of Northern Justice**

There are often significant differences between those persons involved in the delivery of justice services in the North and the recipients of Northern justice. Persons involved in the delivery of justice services:

- are generally non-Aboriginals who were born and educated in the 'southern', urban areas of the country;
- often reside in the North for only a short periods of time and generally reside in one of the regional centres;
- most often do not speak the language of the Aboriginal peoples with whom they have contact; and,
- may have little understanding of Aboriginal cultures and traditions.

Persons being processed by the justice system in the North or who are observers of the delivery of justice services:

- *may speak English as a second language or not at all;*
- *may not understand the adversarial nature of Western-style justice or the legal concepts which provide the foundation for the criminal justice system; and,*
- *often do not understand the roles of the different members of circuit court parties which visit their communities.*

While cultural awareness programs have been implemented for criminal justice personnel, it is uncertain whether they have had a significant impact on the rate of Aboriginal involvement in the criminal justice system or whether such initiatives have made the justice system more sensitive to the needs of individual communities and their residents.

### **The Victims of Crime**

There is increasing concern surrounding development of policies and programs to address the needs of crime victims in the North. Griffiths and Yerbury (1991) have suggested that victim-assistance programs developed in the 'Southern', urban areas of the country may have limited usefulness and relevance to Aboriginal peoples, particularly those residing in rural and remote communities. The N.W.T. Task Force on Spousal Assault (Bayley, 1985:10) noted:

There is a common thread running through the problems associated with spousal assault, whether it occurs in Yellowknife, Gjoa Haven or Clyde River. However, solutions which may work in larger communities may not be so easily transferrable to small native communities. At the same time, there may be in those communities closely knit family and cultural ties which will give rise to solutions which might be unworkable in larger more fragmented communities.



One of the more difficult issues surrounding the development of victim services, including "safe houses" for battered women, is whether such facilities can be successfully established in small communities. Currently, women are often forced to leave their home community (and often their children) to seek shelter in a larger community and to escape retaliation from the offender and/or his family. In the Baffin Region, for example, the only women's shelter is located in Iqaluit. Women's shelters in the Yukon are operated in Whitehorse, Dawson City, and Watson Lake.

Women are often under great pressure to remain in their home communities, or to return to their home communities if they choose to leave. As the N.W.T. Task Force on Spousal Assault (Bayley, 1985:9-10) noted: "The concern to keep families and communities together appears to keep many victims from making complaints, from seeking help, from leaving. Parents and grandparents encourage victims to stay with or return to their spouses for the sake of the children and extended family."

The N.W.T. Task Force on Spousal Assault (Bayley, 1985:9) also noted an increasing reluctance on the part of many community residents to assist victims of violence, noting that:

some people . . . have become more reluctant to open freely their doors to victims and their children. Victims are aware of the inconvenience and danger to those in whose homes they must seek refuge. . . . This, coupled with shame and embarrassment, keeps many victims in their own homes, suffering alone and in isolation.

An analysis of victim needs in Yukon conducted by McLaughlin (1984) found that crime victims desired more information about how to report offences to the police, the outcomes of any court

action, and also a need for counselling services. A more recent study by Riordan and Pasquali (1991) found that women in Yukon experienced considerable difficulties with the criminal justice system in attempting to apply for and obtain peace bonds in situations where protection was required from abusive spouses or partners (see also Pasquali, 1985)

#### **Indigenizing the Administration of Justice: The Solution to Aboriginal Conflict with the Law?**

Havemann (1989) uses the term "indigenization" to describe the process whereby Aboriginal peoples are recruited to fill positions such as Special Constables, courtworkers, and Justices of the Peace within the criminal justice system. The indigenization of the RCMP was accomplished by employing Aboriginal persons first as guides and interpreters and later as special constables carrying out full policing duties. Prior to its termination in 1992, the Indian Special Constable program was a predominant feature of the RCMP policing effort. Indigenization has also occurred at the lowest levels of the criminal court system in the North, where attempts have been made to attract Aboriginal peoples to serve as Justices of the Peace. The remainder of the Territorial judiciary and legal community, however, is nearly all non-Aboriginal. In corrections, there has been a high degree of indigenization at the line and supervisory levels in both community-based and institutional corrections. In fact, LaPrairie (1992) notes that, for many communities, the criminal justice system may be the major source of employment for residents.

There is some question as to whether this strategy has been successful in reducing the levels of Aboriginal conflict with the law or increasing community involvement in the administration of justice. Merely indigenizing the existing criminal justice system does not insure that the administration of justice will become more effective in addressing the needs of victims, offenders, and communities.

#### **COMMUNITY-BASED JUSTICE INITIATIVES**

In recent years, many Northern communities have become extensively involved in developing community-based criminal justice services and programs which are designed to better address the specific needs of community residents, victims, and offenders. In addition, collaborative arrangements between communities and criminal justice agencies have been established to create alternative mechanisms for justice delivery. In the following discussion, some of the more recent initiatives are examined.

One of the difficulties in discussing community-based justice initiatives is that the terms "community" and "community-based" are used (and overused) to depict a wide range of justice programs and services. There has not been, to date, any clear delineation of "who" the community is or what the criteria are for a program or service to be "community-based." Similarly, "who" is the community is also often unclear. In a study of the development and implementation of community-based justice programs in the Yukon, Weafer (1986) found that:

it is at times very difficult to perceive who exactly is the "community," and what the "community" needs are that a program is supposed to attempt to meet . . . while a program may be based in a community, this does not necessarily mean that the program is realistically a "community-based" program.

While the political leadership in a community can be seen as representing the residents on one level, there may be other levels of representation premised on traditional community organization and traditional family networks. As in larger urban areas, the views and participation of individual community residents may be absent from justice initiatives.

The failure to clearly delineate who and what the community is assumes that all Aboriginal residents in Northern communities share common perspectives on justice issues and, because they are Aboriginal, that these perspectives centre on replacing the current arrangements for justice delivery with community based structures and programs. In fact, as in all communities, there are differences of opinion on general and specific issues related to the administration of justice. There is in all communities a social and political hierarchy which ensures that the views of some residents will weigh more heavily in any decisions regarding the administration of justice.

### **Yukon**

In the Yukon, there has been and continues to be a devolution of the programs delivered by the Yukon Department of Justice. The First Nations are being given control over probation services and Native courtworker programs and a variety

of other initiatives are either planned or currently in operation.

*The Teslin Tlingit First Nation (Yukon) Community Justice Initiative*

The Teslin Tlingit First Nation (Yukon) is currently negotiating for the implementation of alternative community justice structures. By creating initiatives which 1) "dove-tail" with the current criminal justice system and 2) meet the needs of the people of the community, the Teslin Tlingit people have created justice structures which meet the requirements of the Territorial government, while at the same time being culturally relevant to the people of Teslin.

Following a conference sponsored by the leadership of the Teslin Tlingit First Nation, it was determined that the Euro-Canadian justice system was not serving the community adequately and that changes were required. It was decided that the best course of action for the Tlingit of Teslin was the reapplication of traditional methods and structures of social control. A traditional system of government based on a system of clans, which had been employed for hundreds of years, was "dusted off" and restored as the foundation of the community.

The Teslin Tlingit Council Constitution sets out the roles of the leaders of each of the five Teslin clans which includes serving as members of the Teslin Tlingit Justice Council. This council functions as a tribunal and passes sentence on offenders convicted in Territorial Court in Teslin. Bound only by "limits" set by the Territorial Court judge, and informed by submissions

from the Defense and the Crown Counsel, the Justice Council imposes sentences which are appropriate for the treatment of the offender and for the restoration of harmony in the community. According to one Yukon Territorial Court Judge, at least 98 percent of all sentences handled by community members in the Yukon have fallen within limits set by the Court. For the most part, sentences that have gone beyond limits set by the judge have been harsher than recommended by the Crown and/or judge.

Once the sentence is passed, the clan leaders are responsible for ensuring that it is carried out. According to LaPrairie (1992), this approach is beneficial because it involves every community member in ensuring that offenders obey the conditions of their sentence, which helps increase the likelihood that the offender will be supported and that the sentence will be carried out.

The use of clan leaders in sentencing is only part of the holistic approach to the administration of justice in Teslin. Proposals have been made to increase the authority of the Justice Council to adjudicate all summary conviction cases. In the near future, a correctional facility will be constructed in Teslin so that community-based correctional programming can be provided. The Teslin Correctional Centre will be a partnership between the Teslin Tlingit First Nation and the Yukon Department of Justice. It will house 25 inmates (20 males and 5 females). Many of the treatment programs and recreational activities will be offered in the community. These initiatives are to be developed in concert with an expanded program of social development designed to

address the underlying causes of social problems in the community.

The development of the Teslin Tlingit initiatives has been aided by the relative autonomy that is afforded Northern communities to undertake local justice initiatives. The support and cooperation of the Territorial Court, Crown counsel, and the RCMP in combination with the persistence and dedication of the Teslin Tlingit First Nation administration has produced positive results (Flather, 1992). Statistics produced by the RCMP indicate that, since 1990, there has been a substantial decrease in the number of crimes recorded by the police in Teslin (Canadian Centre for Justice Statistics, 1991; 1992). While caution should be exercised in assuming that this community-based justice model can be replicated in other Northern communities, it does provide an example of how, through the revitalization of Aboriginal culture and cooperation between the criminal justice system and communities, effective community-based justice forums can be created.

*Circle Sentencing in the Yukon*

One of the more innovative approaches to sentencing in the North is "circle sentencing" which is being practised by judges of the Territorial Court in Yukon. It involves all of the participants in a case - the judge, Crown counsel, defence lawyer, victim, offender, and community residents - sitting in a circular arrangement and discussing all facets of the case. The circle, which represents a radical departure from normal courtroom decorum, is designed to break down the formality of the

court process and to provide a forum for the disposition of cases which is premised on healing, consensus building, and to return to the communities the responsibilities for resolving conflict. The discussions surrounding the case centre not only on the offender, but on the needs of the victim and the community. Circle sentencing is an attempt to empower communities and to provide a mechanism for residents, Aboriginal and non-Aboriginal alike, to become directly involved in the delivery of justice services.

In some Yukon communities, circle sentencing has been implemented for offenders convicted in Territorial Court. As implied by the term "circle sentencing," court participants (judge, Crown, accused, defence, the accused family, community residents, etc.) are seated in a circle. According to the decision in *R. v. Moses* (1992) this change in the physical layout of the court room changes the dynamics of the decision-making process, making it much more participatory and de-formalized. By equalizing the participants, ownership over the process is returned to the community which, in turn, increases their authority. Rather than having outsiders resolve their problems, conflict is given back to the community for residents to deal with.

In cases adjudicated in sentencing circles, the judge sets an upper limit on the sentence which may be granted; informal discussion on the offender and on his or her personal circumstances by participants in the circle follows. Finally, after all discussion is concluded, a consensus on the most



appropriate sentence reached and this is the disposition which is imposed on the offender (*R. v. Moses*, 1992). The circle sentencing not only empowers the community, but it also expands the information base from upon which sentencing decisions are made. In addition to considering the facts of the case and the circumstance of the offender, the discussions in sentencing circles often include a dialogue on problems that exist in the community.

#### *The Yukon Native Courtworker Program*

As the central organization representing the Aboriginal peoples of the Yukon Territory, the Council of Yukon Indians (CYI) operates a variety of programs serving individuals who have come into contact with the criminal justice system. For several years the Native Courtworker Program in the Yukon has been administered by the CYI. Services are also provided to inmates at the Whitehorse Correctional Centre such as a prison liaison worker, an elders program, life-skills programming, and a spiritual program offering sweats and solstice celebrations.

#### **The N.W.T.**

Over the past year, the N.W.T. Department of Justice has been working with tribal and regional councils to transfer justice services to interested communities. This transfer of justice services is seen as a way of empowering the communities to successfully deal with their own justice affairs (Corrections Service Division, 1991). Discussions have been entered into with communities concerning the formulation of programs and justice

structures. The N.W.T. government stresses that these programs will not be imposed upon the communities, but rather are programs which will be implemented in co-operation with communities, a departure from past practice:

It is **mandatory** that these discussions and, indeed, this initial course of action be responses to local concerns rather than imposed from outside the community. At this point in time, these initiatives should be carried out only if the community opts for expanded responsibility (Corrections Service Division, 1991:3, emphasis in original).

A large part of this transfer involves giving ownership of community corrections to the residents of individual communities. Volunteer Probation Officer Programs, Community Justice Committees and Community Incarceration Programs are currently being considered by several Western Arctic communities. These programs, which are essentially alternative measures diversion programs for adult offenders, would be tailored to meet the needs of individual communities (Corrections Service Division, 1991).

#### *N.W.T. Dene Justice Project*

The Dene Justice Project is a customary law research project being conducted in the western arctic community of Lac La Martre. The purpose of the study is to document traditional Dene justice practices (Department of Justice, G.N.W.T., 1991). The project is a collaborative effort between the community of Lac La Martre, the government, and outside researchers. The community, however, maintains control and ownership over the direction and activities of the project (Ryan, 1992). The objective of the project is to provide accurate and complete information on traditional justice which could be used by both the government and by Dene

communities in creating community-based justice structures (Ryan, 1992).

*N.W.T. Legal Interpreter Training Program*

The *Official Languages Act* of the Northwest Territories stipulates that any of the eight official languages of the N.W.T.<sup>3</sup> may be used by any person appearing in a Territorial court. To ensure that this provision is met, the N.W.T. Department of Justice established a Legal Interpreter Training Program comprised of four two-week training modules. As of 1991, 85 students had completed at least one module and 27 students had completed the entire program. The goal of the program is to provide enough trained interpreters for every court session (Department of Justice, G.N.W.T., 1991).

*Youth Justice Committees*

The Youth Justice Committees (YJC's) are composed of five to seven citizens from the communities who have an interest in assisting young persons in conflict with the law. Cases may be referred to the YJC at any time in the youth justice process by the RCMP, Crown counsel, Justices of the Peace, or Territorial Court judges. Cases are resolved by consensus in discussions involving the committee, the youth, his/her parent or guardian, and the victim. Among the dispositions which the YJC may impose are: requiring that the youth apologize to the victim; having the youth complete a specified number of community service hours; placing a curfew or other restriction on the youth; and/or removing the youth from their home. The Youth Justice Committees

appear to be most effective with minor and first-time offenders rather than with serious or chronic offenders (Finkler, 1992).

#### KEY RESEARCH ISSUES SURROUNDING THE DELIVERY OF JUSTICE SERVICES IN THE NORTH

There are a number of issues surrounding the administration of justice in the Canadian North which should be the subject of community research studies. These studies should focus on gathering information from community residents as well as individuals involved in the delivery of justice services. Attempts should be made to record information on the current arrangements for the delivery of justice delivery, the "gaps" in service delivery, the major areas of difficulty in system/community contact, the views of community residents as to the extent to which the justice system addresses the needs of victims, offenders, and communities, as well as the potential for developing community-based alternatives.

Among the key research issues which should be examined are:

1. *the variability in crime patterns across communities including a focus on why certain communities, even within the same geographic area, seem to be have different patterns of crime and involvement in the criminal justice system.* There is a need to determine the factors are that are associated with high rates of violence, alcohol and solvent abuse among adults and youths, and, conversely, the attributes of communities which experience less crime and trouble. Such research should utilize statistics generated by criminal justice agencies and involve surveying

community residents regarding their perceptions of crime and its etiology.

2. *Northern youth and the criminal justice system.* There is a paucity of materials on Northern youth and their patterns of contact with the criminal justice system. There is considerable evidence that Northern youth experience conflict in attempting to adapt to mainstream Canadian society while retaining traditional customs and values. To date, there have been no studies which have focused on issues such as the availability of legal counsel, ensuring separate detainment facilities for Northern youth, and the lack of community-based treatment programs and services (see Griffiths, 1987).

3. *Women, crime and criminal justice in the North.* There is a need for studies which examine the patterns of crime among Aboriginal women in the North, their involvement at various stages of the criminal justice process, and the policy and program issues raised when Aboriginal women come into conflict with the law.

4. *evaluations of community-based justice programs and services currently operating in the North.* This research would focus on selected community-based justice initiatives and their impact on the nature and extent of crime and trouble, resident perceptions of and involvement in initiatives, and the views of outside justice personnel of the initiatives.

5. *an identification of the ingredients critical to the creation and continuation of effective partnerships between communities and outside justice agencies and, conversely, what experience*

*suggests are the obstacles to effective collaborative efforts. Research should focus on the dynamics associated with developing, implementing and operating collaborative initiatives between the criminal justice system and Aboriginal communities. This should include a consideration of specific initiatives which, from the view of community residents and justice personnel, are effective in achieving their objectives, as well as initiatives which are perceived to have failed to accomplish their objectives.*

There is some evidence, for example, to suggest that justice programs developed external to the communities have limited effectiveness in addressing crime. The most successful initiatives are those which are developed by communities and government in a collaborative effort, or those which are initiated by the communities themselves (see Griffiths, 1990; 1991; 1992). In arguing for the development of a community-level perspective on the administration of justice, Clark (1992:513) notes:

individual Aboriginal communities are being left out of the process of defining problems and finding solutions. At the most fundamental level the questions are these: What are the essential problems facing communities insofar as justice is concerned? What are the causes of the problems? And what can be done that will lead to acceptable, workable and lasting responses to the problems and their underlying causes?

6. *the factors at the community level which are facilitative of or which hinder the development and successful operation of community based justice initiatives. This would include an examination of the role that culture and traditions, strong political leadership, and the commitment of key individuals in*

the community including elders play in the creation of justice initiatives.

Both Aboriginal and non-Aboriginal observers have argued that it is unrealistic to expect any criminal justice structure, whether sponsored by the Canadian criminal justice system or a community-based initiative, to effectively address the myriad of difficulties which afflict many northern communities. Crime and associated problems such as suicide, alcohol and solvent abuse, and violence, are in many instances the symptoms of much deeper afflictions which have their roots in the historical and contemporary circumstance of communities. The lack of viable economic opportunities, the absence of recreational facilities, and, in many communities, the loss of traditions and lifeways all combine to generate problems. As LaPrairie (1992:56) notes, "Substantive community problems . . . must be overcome before real progress is made in reducing the numbers of Aboriginal people involved in the criminal justice, child welfare and youth justice systems."

LaPrairie (1992:55) also found that the majority of criminal charges in the Yukon were heard in the more populated communities of Whitehorse, Dawson City and Watson Lake, a finding which calls into question whether the development of community justice alternatives will assist in reducing Aboriginal involvement in the criminal justice system.

In addition, the majority of the community justice initiatives in the North are highly "person dependent." The success or failure of programs is often dependent upon the

energy and initiative of key resource people, whether they are a community resident or a representative of the criminal justice system. Local residents often experience "burn out" from overcommitments in the community, while key resource persons such as RCMP officers are transferred on average of every two years. There is a critical need to develop mechanisms to ensure continuity of effort on the part of both community residents and criminal justice agents.

And, while there has been an attempt to develop alternative methods of control and response to crime, Morse (1984), Hawkes and Peters (1986), and other observers have noted that there is a considerable amount of uncertainty as to how to implement traditional methods of social control and how such structures will interface with the *Criminal Code* and the provisions of the *Canadian Charter of Rights and Freedoms* (See Government of the Northwest Territories, 1991; Morse, 1989).

7. *the needs of crime victims in the North, particularly women who have been the victims of sexual assault and domestic violence.* A further area which requires scholarly inquiry relates to the victims of crime in the Canadian North, particularly as it relates to women as the victims of violence. The findings of such inquiries will have significant implications for the administration of justice and for discussions surrounding the creation of alternative, community-based programs and services.

8. *the potential conflict between community justice initiatives and protection for victims of crime.* While Northern



jurisdictions are pursuing a policy which encourages the devolution of justice services to the community level, concerns have been raised about the ability of community justice initiatives to protect individuals vulnerable to criminal victimization. Aboriginal women have voiced concerns about the high rates of sexual and physical abuse in communities and questioned whether local justice initiatives provide adequate protection for the victims of violence and abuse and can impose appropriate sanctions on offenders. Aboriginal women's organizations have been active in addressing issues related to spousal assault and violence in the communities and in pressuring the criminal justice system to respond more firmly to offenders.

The issue of violence and sexual assault is illustrative of the sensitivities which surround the administration of justice at the community level. At present, there is a lack of adequate treatment for offenders who commit violent acts. Leaving the offender in the community, under the guise of "community-based justice" may be harmful to the offender, the victim, and the community.

In a study of gender equality in the administration of justice in the N.W.T., Peterson (1992:74) argued: "while these efforts to expand the perspective of the administration of justice are very positive ones, there must be a degree of caution exercised. In receiving input from the community, there must be some assurance that the input received is truly representative of community opinion or values" (see also Nightingale, 1991:93).

In consultations at the community level Peterson (1992:75) found that many Aboriginal women expressed concerns that their voices were not heard and a common complaint was that there was a willingness to hear from male elders and not from women:

There must also be an awareness of the fact that there can be differences that develop along generational lines and that older people may evidence a tolerance of violence against women that is no longer acceptable to younger women. In seeking advice and input from communities these differences must be recognized. While it is appropriate to explore alternatives for addressing issues of violence, such alternatives must not become a mechanism for excusing violent conduct.

9. *the treatment needs of Aboriginal offenders in the North and an assessment of whether these needs being met by current community-based and institutional correctional programs.* There is some question as to whether the treatment needs of Aboriginal offenders, particularly those individuals who have been convicted of serious crimes, including sexual assault, are being met by current correctional programming (see Faulkner, 1989). Throughout the North, there is a lack of post-disposition treatment available to offenders. The economies of scale necessary for the establishment of clinical treatment programs required to break the cycle of violence are not present in the North (Lilles, 1990).

Research should examine the needs of Aboriginal offenders who are sentenced to community supervision or to confinement in a correctional institution and attempt to determine whether these needs are being addressed by existing programs. Further, the potential and limitations of community-based treatment programs should be explored.

10. *comparative studies of crime and criminal justice in the circumpolar North.* In the coming years, it will be important to develop comparative studies of crime and criminal justice between Alaska, Canada and Greenland (see Wood and Antoft, 1987). Many communities in these jurisdictions exhibit similar difficulties with alcohol and solvent abuse, high rates of violent crime, and extensive involvement of Aboriginal persons in the criminal justice system. Comparative research could explore the similarities and differences between the three jurisdictions.

The administration of justice in Greenland provides unique opportunity for comparative study. Greenland is the world's largest island and comprises nearly 2.0 million sq. kilometers and has approximately 53,000 residents, most of whom (85%) are Inuit and reside along the West coast. A number of observers have examined the Greenlandic Home Rule system (see Wood and Antoft, 1987b; Dahl, 1986; Haller, 1985; Olesen, 1979) while others have focused the dynamics of community life (see Langgaard, 1986). The Greenlandic *Criminal Code* and legal system stand in sharp contrast to the "total rejection" approach to Aboriginal peoples taken by governments in Canada.

There appears to be similarities between the patterns of crime and trouble in Greenlandic communities and the communities of the Baffin Region. Larsen (1990) has published the results of a study of death and social change in Eastern Greenland and Thorslund (1990) has completed an extensive study of suicide among Greenlandic youth. While the majority of the research has

been conducted by Danish and Greenlandic scholars, much of it is available in English.

The Greenlandic *Criminal Code*, enacted in 1954, is strongly embedded in traditional Inuit methods of social control. It provides for a system of Lay Assessor Courts at the community level. These courts, staffed by residents of the community, serve as courts of first instance and hear cases ranging from public intoxication to murder. Schechter (1983:80) has described the Greenlandic *Criminal Code* and the decentralized, community-based system of justice delivery as an attempt to "graft traditional Inuit concepts of justice onto a Westernized, Danish system of laws and procedures."

Jensen (1989) has conducted a critical analysis of the Greenlandic *Criminal Code* and the legal system which suggests that, while the Lay Assessor court system is successful in "localizing" justice, there is concern among the residents of many communities about the leniency of the dispositions meted out. More specifically, Jensen (1992) documents cases in which individuals convicted of multiple offences involving sexual assault were required to pay fines (see also Schechter, 1983). While the Lay Assessor court system in Greenland has been suggested as a possible model for community-based justice initiatives in the Canadian North, Jensen's findings suggest that further study of the operation of the Lay Assessor courts is required.

This comparative research will facilitate the development of conceptual frameworks for the study of crime and the

administration of justice in the Canadian North. An interdisciplinary effort is required, one involving scholars from a variety of social science fields working in collaboration with Aboriginal communities and organizations.

The search for effective strategies to deliver justice services in the North will challenge the criminal justice systems of the Yukon and the N.W.T. as well as the communities and residents of these two jurisdictions. The obstacles to designing and implementing justice policies and programs, whether delivered within collaborative arrangements or on an autonomous basis by Aboriginal peoples, are formidable. However, there are unique and exciting possibilities in the North to create forums for responding to crime and offenders, while at the same time addressing the needs of victims and communities.

ENDNOTES

<sup>1</sup> The Northern Justice Society Resource Centre, located at Simon Fraser University, contains an extensive collection of materials related to Aboriginal peoples and the criminal justice system. A particular focus of the centre is on crime and the delivery of justice services in remote and rural areas of the country and there are, as well, comparative materials from the State of Alaska, the lower 48 states, Australia, and Greenland.

Many of the sources cited in this discussion paper have received limited distribution. Copies of specific documents may be obtained (at cost of duplication) by contacting The Northern Justice Society Resource Centre at (604) 291-4239 or by mail at Simon Fraser University, Burnaby, British Columbia, Canada V5A 1S6.

<sup>2</sup> These figures are from the 1986 Canadian Census. Although data from the 1991 Canadian Census showing a breakdown of the proportion of Aboriginal peoples in the North has yet to be released, it is likely that since 1986 these figures have changed very little. If the trend of the past 20 continues, it would be expected that the percentage of Aboriginal peoples in the North has increased (Evaluation Directorate, DIAND. 1989; Wonders, 1987).

<sup>3</sup> The eight official languages named by the *Official Languages Act* of the Northwest Territories are Chipewyan, Cree, Dogrib, English, French, Gwich'in, Inuktitut, and Slavey.

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