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Canada

Research and Statistics Division

# JustResearch

2008 – Issue No. 15

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## Contents



*The opinions expressed herein are those of the authors and not necessarily those of the Department of Justice Canada.*

## Welcome

Welcome to the 15th edition of *JustResearch*, a bi-annual publication of the Research and Statistics Division of the Department of Justice Canada. This edition focuses on First Nations, Inuit and Métis research issues.[1]

Over the last ten years, legislation, reports and Supreme Court of Canada decisions relating to Aboriginal Peoples have resulted in specific research needs. Of particular note is the 1993 comprehensive land claim agreement between the Inuit of the Northwest Territories and the Government of Canada. Following the April 1, 1999 creation of Nunavut as Canada's third territory, the federal Department of Justice (DOJ) made a commitment to assist the new territory in establishing a justice system in keeping with the *Nunavut Act* (1999). As part of this commitment, the Research and Statistics Division (RSD) undertook research in collaboration with the newly formed Nunavut Government Department of Justice to assist officials in building, monitoring and assessing the implementation of justice programs and initiatives in keeping with this *Act*. This body of research is summarized in our "Research in Profile section". This section also includes summaries of research completed with Aboriginal youth in custody, legal aid needs, and research undertaken on victimization and First Nations, Métis and Inuit Peoples.

The work of the 1996 Royal Commission on Aboriginal Peoples (RCAP) and Supreme Court Decisions, such as *R. v. Gladue* [1999], have had rippling effects in attention and engagement. Both RCAP and the *Gladue* decision are integral to the research which examines the link between the ongoing experiences of the colonization process on First Nations. Métis and Inuit Peoples and its impacts on current involvement with the criminal justice system as both victims and offenders. The findings of this research are provided in the article *Understanding Family Violence and Sexual Assault and First Nations, Métis and Inuit Peoples in the Territories*.

[1] First Nations, Inuit and Métis are sometimes referred to here as Aboriginal peoples when referring to each of these groups together, or where used in original documents.

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# Submission Guidelines for Prospective Authors

## Submissions

To submit an article to *JustResearch*, please send an electronic copy of the article via email to the following address:

Anna Paletta
Editor, JustResearch
Research and Statistics Division
Department of Justice Canada
E-mail address: anna.paletta@justice.gc.ca

### Content and focus

The goal of *JustResearch* is to disseminate and integrate policy relevant research results across the Department of Justice Canada and within our readership. As such, articles should focus on issues related to the mandate and the broader policy direction of the Department of Justice Canada. Please consider the themes for upcoming issues (see below) in the preparation of your submissions. Authorship and institutional affiliation should be included with all submissions.

### Language

Articles may be submitted in either French or English.

### Length

Articles should be between 2000 to 4000 words (5-10 pages, single spaced) including references, tables and figures.

### Style

All articles should be written in a clear, non-technical language appropriate for a broad audience. The use of headings and subheadings is strongly encouraged. The electronic copy being submitted should be in 11-point Times New Roman font, and the text should be single-spaced. No logos, headers, footers, or other embedded elements should be inserted in the electronic copy of the article. Tables and figures should be numbered consecutively and should be placed appropriately throughout the article. They should be submitted in Microsoft Word, Excel, Access, or PowerPoint, and the source files should be provided and be clearly identified. The style to be used for references, footnotes, and endnotes should follow the author-date system described in *The Chicago Manual of Style*.*

## Publication

Please note that we cannot guarantee all submissions will be published. All accepted articles will be edited for content, style, grammar and spelling. Any substantive changes will be sent to the author(s) for approval prior to publication. ▲

* University of Chicago Press, The Chicago Manual of Style, 15th edition (Chicago; University of Chicago Press, 2003).

## Contributors

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## Feedback

We invite your comments and suggestions for future issues of JustResearch. We welcome your ideas for upcoming themes and and are happy to accept original submissions for publication. We may be contacted at: rsd.drs@justice.gc.ca ▲

# Welcome (cont'd)

Extensive research was also undertaken by RSD in response to the 2003 Supreme Court of Canada decision in *R. v. Powley* [2003]. This was the first case where Métis people had been able to successfully assert an Aboriginal right and it provides a basis upon which other Métis Aboriginal rights can be argued. The methodology used and reports of this research are summarized in the article *A Program of Research Related to Historical Métis Communities*.

In addition, how Aboriginal research issues themselves are understood, is changing. Rupert Ross, Crown Prosecutor responsible for prosecutions in north-western Ontario, explores the need for a paradigm shift in the context of social justice and Aboriginal Peoples. The questions he raises in his papers *Exploring Criminal Justice and the Aboriginal Healing Paradigm* (forthcoming), and *Traumatization in Remote First Nations: an Expression of Concern* (unpublished), became the basis of a forum held by the Department of Justice in March, 2007. A summary of this forum, "Forum on Justice System Responses to Violence in Northern and Remote Aboriginal Communities," is included in this issue.

The importance of a paradigm shift in the way First Nations, Métis and Inuit Peoples are understood in traditional discourses and included in the research processes is the focus of a dialogue between the Social Sciences and Humanities Research Council of Canada (SSHRC) and Aboriginal researchers. In the preamble to their submission, Professor Jo-Ann Episkew, Academic Dean and Associate Professor of English, and Dr. Winona Wheeler, Dean of the Saskatoon Campus and Associate Professor of Indian Studies, Saskatchewan Indian Federated College, wrote that a significant element in solutions is "the need to shift the research paradigm from one in which outsiders seek solutions to the 'Indian problem' to one in which Indigenous people conduct research and facilitate solutions themselves." The report of this dialogue, *Opportunities in Aboriginal Research: Results of SSHRC's Dialogue on Research and Aboriginal Peoples*, is included here because of its relevance to the work that we as researchers all do.

This edition of *JustResearch* is dedicated to Dr. Gail Guthrie Valaskakis. Dr. Guthrie Valaskakis had described herself as being born with a moccasin on one foot (her father was Chippewa) and a shoe on the other (her mother was Dutch–American). She broke new ground and excelled in both worlds. She was co-founder of the Montreal Native Friendship Centre, and went on to become Dean of the Faculty of Arts and Science at Concordia University in 1992, one of the very few females to become a Dean in Canada at that time. Dr. Guthrie Valaskakis left this position to become Director of Research for the Aboriginal Healing Foundation in 1998. Her many, many contributions were recognized, and in 2002, she received a National Aboriginal Achievement Award.

Dr. Guthrie Valaskakis passed away in July of 2007. I had the privilege of meeting and working with Gail. She was an inspiration and a generous mentor; she was tireless, gracious, impassioned and brilliant. She was to be co-editor of this edition of *JustResearch*. I know that it would have been quite different if she had been. ▲

Anna Paletta, Editor

Past issues of *JustResearch* are available at: http://canada.justice.gc.ca/en/ps/rs/jr.html

# First Nations, Métis and Inuit Justice Conference 2008

## National Conference:

### The Path to Justice, Access to Justice for individuals with Fetal Alcohol Spectrum Disorder

In September, 2008, the Yukon Department of Justice, in collaboration with the steering committee on Access to Justice for individuals with Fetal Alcohol Spectrum Disorder (FASD) and the Department of Justice Canada, will be hosting a national conference to address the barriers individuals with FASD face in accessing the justice system. The purpose of the conference is to review best practices and approaches and to obtain commitment from participants to actively work to reduce these barriers. Participants will include key decision-makers from various federal and provincial government departments, non-governmental and community-based organizations, as well as experts in the field of Access to Justice and FASD. Due to socioeconomic conditions and a willingness to identify and address this issue, FASD is overrepresented in some northern and First Nations, Métis, and Inuit communities. While the conference does not focus exclusively on Aboriginal populations, there will be Aboriginal speakers and attendees represented at the conference, which is intended to broaden understanding of this issue and contribute to identifying meaningful solutions to address the barriers individuals with FASD have in accessing the justice system.

For more information contact Charlotte Fraser, Research Analyst at chfraser@justice.gc.ca or 946-9283 ▲

# Indian Residential Schools and the Truth and Reconciliation Commission

Seetal Sunga, A/Director of Indian Residential Schools Resolution Canada

Indian Residential Schools were boarding schools for Aboriginal children operated throughout Canada by the federal government and religious organizations for over a century; the last school closed in 1996. During this period, harms and abuses were committed against the children who attended these schools, and as a result, numerous lawsuits were launched against the federal government, churches and others. The Assembly of First Nations, other Aboriginal organizations, the federal government, churches, as well as the class representatives and the lawyers representing them, proposed a class action settlement to the courts and former students for approval, while providing former students the opportunity to opt-out of the class action.

The courts approved the Indian Residential Schools Settlement Agreement (Settlement Agreement). The Settlement Agreement aims to promote healing, reconciliation and relationship-building for former students and their descendants. It includes compensation for abuse claims and collective and programmatic components. There was an overwhelming response from former students who wished to partake in the Settlement.

A key component of the Settlement Agreement is the creation of a Truth and Reconciliation Commission (TRC), which will be comprised of a Chairperson and two Commissioners, who will be persons of sound judgement and integrity, with recognized stature and respect. At least one of the three members will be an Aboriginal person. The Truth and Reconciliation Commission will promote public education and awareness about the Indian Residential Schools (IRS) and their legacy, as well as provide former students, their families and communities with the opportunity to share their IRS experiences in a safe and culturally-appropriate environment through a series of national and community events. It is expected that high level government and church officials will participate in these events. The TRC will also establish a research centre for ongoing access to the records collected throughout the TRC's work.

An important aspect of the Commission's work will be the production of a comprehensive report containing the results of its research and recommendations concerning the Indian Residential Schools legacy. The Commission will be able to use a multidisciplinary approach, including recognition of the experiential expertise of IRS survivors.

The Truth and Reconciliation Commission will begin its work in early 2008.

For further information on the schools and the class action Settlement Agreement, please visit this website: http://www.residentialschoolsettlement.ca/ ▲

# Research in Profile

## Where we have been

Anna Paletta, Principal Researcher
Kimberly Burnett, Research Assistant

The following is an overview of the research conducted by the Research and Statistics Division (RSD) of the Department of Justice Canada with First Nations, Métis, and Inuit Peoples. In recent years this research has focussed on the North; research also has been conducted on Aboriginal youth, as well as victimization.

### Nunavut Territory

In 1993, the Inuit of what is now called Nunavut, and the Government of Canada reached a comprehensive land claim agreement, and on April 1, 1999 the Nunavut Territory was established. The population of Nunavut at that time was 26,745 people who lived in twenty-six communities scattered over some two million square kilometres, most with no linkages other than by air. Following the creation of Nunavut as Canada's third territory, the federal Department of Justice (DOJ) made a commitment to assist the new territory in establishing a justice system in keeping with the *Nunavut Act* (1999). As part of this commitment, the Research and Statistics Division (RSD) undertook research in collaboration with the newly formed Nunavut Government Department of Justice to assist officials in building, monitoring and assessing the implementation of justice programs and initiatives. More specifically, research was undertaken to aid in the development of a system of justice that emphasizes local institutions which reflect the cultural and social realities of the Inuit people. This fulsome program of research is briefly discussed below.

A detailed analysis of RCMP crime data was one of the first research projects undertaken in Nunavut as an initial step. The analysis provided the data for each region, as well as for each of the 26 communities (Parriag and Clement, 2000). The authors found that the most frequent charges for each region across Nunavut were assault level 1, breaking and entering business premises, and "other" *Criminal Code* offences.[2] The majority of offenders were adult males. Male youth were also charged most frequently for breaking and entering business premises, and residences, and "other" *Criminal Code* offences. Although females were charged with assault level 1 offences, they were responsible for a significantly smaller number of offences. Female youth were charged with a negligible number of offences.

Parriag and Clement reported general trends with respect to the frequency with which reported offences, actual offences, and clearance rates occurred within all regions. One clear trend was the predominantly low clearance rates (such as convictions, or findings of not guilty) for sexual assault offences. The authors noted that this could in part be due to a greater likelihood of a relationship between the offender and the victim because of the relatively small sizes of the communities.

Correctional services in Nunavut also were examined (Landau, 2002) to provide a profile of the inmate population in Nunavut. Between April 1 and December 31, 2001 Landau completed face-to-face interviews, as well

[2] "Other" *Criminal Code* offences include administration on justice offences such as breaching conditions of parole, for example.

as a review of the institutional file data, in Baffin Correctional Centre (BCC) which houses adult males, and the Isumaqsunngittut Youth Centre for youth in custody. Both correctional services are in Iqaluit. This research linked the personal, correctional and community experiences of individuals under sentence and forms part of a larger agenda to map out the criminal justice system in Nunavut and develop a plan for future directions.

This research indicates that almost all inmates in both adult and youth correctional facilities are Inuit (as are the vast majority of Nunavummiut), including some adult inmates who are unilingual Inuktitut speakers. Whereas the offences for young offenders are more often non-violent, the majority of the adult inmate population are currently in prison for multiple convictions involving high rates of sexual and non-sexual violence. Given the seriousness of these offences, programs offered during incarceration must meet a variety of complex inmate needs, preparing them for release into communities. This is of particular concern given that these communities in Nunavut typically have few resources to provide ongoing support.

While there is a wide range of relevant programs offered to inmates in both BCC and Isumaqsunngittut Youth Centre, they were occurring in a context of limited Inuit cultural relevance, and were generally unavailable in Inuktitut. The Nunavut Corrections Planning Committee of BCC (1999) recognized the need for core programs that are designed specifically for Inuit offenders and delivered in culturally appropriate manners by trained Inuit who speak Iniuktitut. These programs were in the initial stages of program development at the time that this research was conducted. Notably, Landau spoke to the lack of facilities in Nunavut available to house female offenders; while female offenders comprise a small proportion of the offending population, the disadvantage experienced by female Inuit offenders is compounded by the consequent increased geographic, social and cultural dislocation.

A number of research projects concerned changes in the justice systems. Amendments to the March 1999 *Nunavut Act* did away with the two-tier trial court system and implicitly encouraged an expanded role for justices of the peace. Research was undertaken on the unified court structure, justices of the peace and community-based justice committees. In their report, Crnkovich, Addario, and Archibald (2000) present the complex and multi-layered issues in relation to these three components of the justice system, including an analysis surrounding their impact upon Inuit women.

Crnkovich et al. highlighted that while the expanded role of the community justice and justices of the peace embrace Inuit culture and the unified court structure helps bridge the distance between the mainstream justice system and justice in Inuit culture, the pace of these changes may inhibit the involvement of Inuit women. And, where the planned changes to a more community-based justice system addresses the need for cultural sensitivity, these reforms can result in the exclusion of gender sensitivity. A fundamental lesson learned here is that reforms must be undertaken with due regard for a process of community involvement that is accountable and community-based, representative and sensitive to gender, as well.

Crnckovich, et al., provided a series of recommendations. They indicate that requiring the provision of training to all justice personnel, including justices of the peace, members of the Community Justice Committees, and judicial candidates and that such training would need to address Inuit traditions and practices, and the dynamics of abuse, in addition to legal rules, procedures and practices is a crucial element of changing the justice system.
Additional research was undertaken to provide a needs assessment for community justice to succeed in small communities, especially those with few resources as was the case in Nunavut (Giff, 2000). Giff included voices from across Canada, representing a cross-section of scholars, community justice workers, and government representatives to share some of the key elements that require consideration for community-based justice in the North, and specifically in Nunavut. This review addresses the Northern socio-economic environment (social issues, crime and justice issues), lessons learned (the nature and results of community-based justice projects in Canada), the nature of community relationships and the dynamics of community mobilization, as well as the inter-relationships between community-based justice and mainstream justice.

While the literature review indicates that hard and fast answers regarding community-based justice development, implementation, and operation are complex, the research included in this report highlights a number of key areas that play a fundamental role in facilitating success in community-based justice programming. Most importantly, as discussed in Crnckovich et al., Giff highlights that a community-driven approach needs to address any power dynamics that may operate in the community in order to enable those who are vulnerable to come forward. In addition, a clear articulation of the process, and that a holistic focus which understands and incorporates the role of health and housing in crime prevention are imperative.

As part of the ongoing process of community justice development, a review of Nunavut's Community Justice Program was undertaken in 2005. The purpose of the NU Community Justice Program is to assist communities in building their capacity and to attend to their own justice issues in a manner that meets their unique needs while maintaining security within their communities. *Inuit Quajimajatuqangit*, or Inuit traditional knowledge and world view, are to be an integral part of this process.

Data for this review were gathered through document reviews, as well as interviews and group consultations (Scott Clark, 2005). Participants included Nunavut Justice officials; Justice Canada officials; community consultees working directly with the justice system (e.g., Community Justice Committee Coordinators, Community Justice Specialists, RCMP officers, etc.); and, community consultees not working directly with the formal justice system (e.g., Hamlet officials; and Community Justice Committees). Data was gathered on the role of each of these, as well as the role of the hamlets, the infrastructure, victim involvement, reporting, and planning, and outcome measures and monitoring. Detailed recommendations are provided on funding, training, infrastructure development, committee membership, committee process, etc. Findings from this research were an integral part of developing a training manual for the Program.

Research was also completed in preparation for the Government of Nunavut's drafting of its own family violence legislation. In order to inform this process, RSD reviewed existing provincial and territorial domestic violence legislation and implementation strategies (Roberts, 2002). At that time, five jurisdictions had such legislation: Yukon, Alberta, Saskatchewan, Manitoba and Prince Edward Island.[3] The research included extensive document reviews, interviews and consultations with key individuals in these jurisdictions. The report provides details on the requirements that are paramount to the success of family violence legislation and implementation. These fall within the categories of the need for a comprehensive infrastructure equipped to respond to calls, training as an ongoing part for all professionals involved in prevention and prosecution, and public education on the harms and the law. (The Nunavut *Family Abuse Intervention Act* was assented to on December 5, 2006.)

The Nunavut *Family Abuse Intervention Act* is a key piece of legislation for Nunavut as rates of family violence are high. Moreover, victim services are scarce, partly because of the small sizes of communities which can hinder development of an adequate infrastructure, including sufficient operational budgets and professional staff for social and community services. Because of the lack of adequate resources in many of the communities in the north, research specifically on victim services available in the communities was undertaken (Levan, 2003). This research began in Nunavut, and was later extended to include the remaining two territories. This research had a number of inter-related tasks and objectives. In addition to developing a complete inventory of services available to victims of crime in each of the territories, this research also identified challenges and gaps in the delivery of victim services, and provided best practices as well as recommendations on how to best address these gaps.

While the exact nature of the support required varies across each territory, they do share commonalities: extensive training; increased public awareness and edu-

[3] Ontario's legislation was only in its first reading at the time of this research and, therefore, was not included in this review.

cation campaigns; increased support to networks; support through legislation, policy and the criminal justice system; and increased support to community-based resources were needed to varying degrees across communities in the territories. Grounded in a community development model of understanding the issues, the author concludes that the service providers in the communities (whether volunteer or paid) are experts in what needs to be done and what they need is more support to do it; the over-arching recommendations for each territory are grounded in this need to support local people and local programs.

There are justice issues which required issue-specific research. In Nunavut. *R. v. Suwa*rak (1999) raised the issue of providing Inuktituut sign language interpretation in court. In the provinces sign language interpretation using American Sign Language (ASL) for the English speaking community, and Langue des signes québécoise (LSQ) for the French speaking community, are routinely provided by the courts to people who are hearing impaired who require it. The issue confronted in this case was that the man who was hearing impaired before the court did not know ASL nor LSQ. In addition, the individual had limited ability to speak, read or write. The man did, however, appear to have knowledge of a signing system which he apparently used with facility to communicate with people in his immediate environment. Consequently, research was undertaken to provide a preliminary examination of Indigenous signing systems for possible use in court (MacDougall, 2000).

### Victimization and First Nations, Métis and Inuit Peoples

Much of the research conducted focused on Aboriginal *offenders*; there is less known about the overrepresentation of Aboriginal *victims*. Whereas Levan (2003) looked at victim issues in the territories, Chartrand and McKay (2006) undertook research on the criminal victimization of First Nation, Métis and Inuit peoples. Through their extensive review of the literature, Chartrand and McKay found that criminal victimization of Aboriginal people was found to be disproportionately higher than the criminal victimization of the general Canadian population. Personal violence experienced by Aboriginal women, youth, and people with disabilities was highlighted by the authors as particularly problematic. Indeed, the authors indicated that victimization rates of Aboriginal women in some communities were reported as high as 80%. Although the rates of victimization are quite high, Chartrand and McKay noted indications that victimization of women, children, and men often goes underreported in Aboriginal communities.

### Aboriginal Youth

A plethora of Canadian empirical research focuses on experiences related to *adult* Aboriginal overrepresentation at various stages in the criminal justice process; there is less empirical knowledge surrounding the experiences Aboriginal *youth* in custody. Bittle et al. (2002), and later, Latimer and Foss (2004) (through a snapshot, one day survey) sought to fill this gap by analyzing incarceration rates of Aboriginal youths in custody.

In 2002, Bittle et al. found that the typical Aboriginal youth in (open, secure or remanded) custody on the day of the survey was a male between the ages of 16 and 17 who had been convicted of a property offence in an urban area. This study also includes more detailed data by jurisdiction, as well as information surrounding where Aboriginal youth were living prior to their current admission, and where youth planned to relocate upon release.

Latimer and Foss (2004) included a comparison group consisting of non-Aboriginal youth in custody to offer much needed perspective by juxtaposing the situation of Aboriginal youths in custody with that of non-Aboriginal youths in custody. The authors reported substantial reductions of incarceration rates of Aboriginal youth since 2000. Despite these reductions, Aboriginal youth experience a higher rate of incarceration than their non-Aboriginal counterparts. Indeed, the authors found the incarceration rate of Aboriginal youth was 64.5 per 10,000 population while the incarceration rate for non-Aboriginal youth was 8.2 per 10,000 population: Aboriginal youth were almost eight times more likely to be in custody compared to non-Aboriginal youths, despite only representing 7% of the total population of youth in Canada.

Latimer and Foss posited that a complex of interacting variables likely contribute to the gross overrepresentation of Aboriginal youth in custody. In particular, the

authors indicated that high rates of poverty, substance abuse, and victimization can lead to a breakdown of the family as well as serious offending at a young age. Moreover, they noted that discrimination toward Aboriginal youth in the criminal justice system may contribute to overrepresentation of Aboriginal youth in custody.

The 2004 Latimer and Foss study also included 'Sharing Circles' – a forum which permitted Aboriginal youth to speak to their experiences prior to entering custody and the criminal justice system (for their current offence) in a manner akin to a focus group. During the Sharing Circles, topics were introduced by an Elder; youth were passed a 'talking stone' and given the opportunity to share their opinion on particular subjects and their experiences. Group participants discussed issues such as substance abuse, organized crime, and racism. Moreover, respondents conveyed their opinions surrounding effective correctional programming for Aboriginal youth in custody. Sharing Circle members indicated Aboriginal youth in custody could benefit from Aboriginal cultural and spiritual programming and one-on-one mentoring.

### Legal Aid

The Department of Justice commissioned three studies relating to legal aid services in the Northwest Territories (Focus Consultants, 2002), Nunavut (IER and Dennis Glen Patterson, 2002), and Yukon (Focus Consultants, 2002). These studies were later summarized collectively (de Jong, 2003). The reports employed both qualitative and quantitative techniques, utilizing interviews, focus groups, document and file reviews, as well as a variety of quantitative sources to provide a picture of legal service provisions in Northern Canada.

De Jong notes contextual differences between the territories that affect the legal aid service and delivery in the North; for example, the mandate of the Yukon Legal Services Society is different from those of the Legal Services Board (LSB) of NWT and the Nunavut Legal Services Board (NSLB). There are also a number of similarities between the three territories, such as the circuit court structure, distances between communities, high crime rates, and a lack of local resources.

The author indicated geography tends to impact service provision inasmuch as geography is related to difficulty accessing communities. Culture and language differently impact the pattern and quality of service delivery as well as the demand for service in different communities.

The NWT, NU, and the YT have both resident and circuit courts. The circuit court structure was found to be characterized by heavy dockets, compressed schedules, time pressures, and – particularly in the NWT and Nunavut – a difficulty with respect to accessing clients for case preparation. Respondents in Nunavut indicated that circuit courts cause substantial delay in service provision. Moreover, respondents in Nunavut were concerned with the discontinuity of counsel that arises from the use of circuit courts.

Respondents in all three jurisdictions reported insufficient representation for family and civil law issues. In addition, respondents in all three jurisdictions were concerned with the level of representation prior to first court appearances – this was especially a concern in the NWT and YT. Quality of telephone representation was also identified as an issue in all three jurisdictions.

De Jong's report also speaks to the role of the Court Work Program, Justices of the Peace, as well as drivers of cost, public legal education and information, and proposed solutions to unmet needs.

In December 1998, a project designed to improve legal aid services to Aboriginal people was launched in Kent County, New Brunswick (Currie, 2000). A large number of adjournments of first appearances required by Aboriginal accused persons was observed in this County. Anecdotal evidence suggested the large number of adjournments was due, in part, to a language barrier between Aboriginal accused persons and non-Aboriginal lawyers. The duty counsel project was initiated to curb this situation; an Aboriginal lawyer who spoke Mi'Kmaq, the language of the region, was hired to provide duty counsel services to Aboriginal people at the Richibucto provincial court. In the first year of the duty counsel project adjournments for Aboriginal accused persons were significantly reduced. Notably, the decrease in adjournments did not lead to an increase in guilty pleas; instead, the program resulted in an increase of not guilty pleas. Currie (2000) concluded the duty counsel project was successful in the first year of its operation.

## Centralized Safe Firearm Storage in Manitoba

Centralized safe firearm storage programs provide a venue for community members to voluntarily store their firearms in a centralized facility when they are not required for hunting. Cormier's (1998) exploratory study reviews central firearm storage programs in four Aboriginal communities (God's Lake First Nation, God's River First Nation, Mathias Colomb Cree Nation, and Shamattawa First Nation) in Manitoba. This exploratory research involved telephone and on-site interviews with program administrators as well as community members. Three rationales for centralized firearm storage were put forth by program administrators: firstly, that firearms should not be readily available where their use may be inappropriate or threatening; secondly, that firearms should not be available to those persons who are not skilled or knowledgeable in the safe handling of firearms, such as children; and finally, that safe firearm storage prevents firearm theft. The author found that central firearm storage can be achieved with little inconvenience to community members, and can substantially benefit the community; for example, in God's Lake the main benefit of the storage program was a reduction in the prevalence of firearm usage during the commission of offences. Cormier identified four elements of successful safe firearm facilities: that there is community will to use the program, that the public is aware of the program, that there is public confidence in the program and that the program is convenient.

## Conclusions

Based on the work of Parriag and Clement (2002), and Landau (2002) we were able to map out what types of crime were common in Nunavut at the time of its inception, and what correctional facilities were available. From Giff (2000) we have learned what facilitates the success of community-based justice programs in Nunavut. Bittle et al. (2002) and Latimer and Foss (2004) empirically confirmed that Aboriginal youths are overrepresented in custody; indeed, the latter study demonstrated that Aboriginal youths are almost eight times more likely than their non-Aboriginal counterparts to be in custody. Similarly, Chartrand and McKay (2006) found Aboriginal victimization rates to be disproportionately high compared to the general population, and highlighted personal violence experienced by Aboriginal women, youth, and people with disabilities as especially problematic. Currie (2000) concluded the duty counsel project in New Brunswick was successful in the first year of its operation. Cormier (1998) revealed that safe firearm storage can be of substantial benefit and can be employed with relatively little inconvenience to community members. Clark (2004) found the Nunavut Community Justice Program to be effective at providing an alternative to the formal justice system, although concerns and recommendations to improve the program are noted.

## Featured Reports


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# A Program of Research Related to Historical Métis Communities[4]

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## Introduction

With the Supreme Court of Canada decision in *R. v. Powley* [2003] 2 S.C.R., Métis were first recognized as having an Aboriginal right to hunt for food as recognized under section 35 of the *Constitution Act,* 1982. This case was ground breaking for Métis people in Canada as it was the first instance where Métis people were able to successfully assert an Aboriginal right and provides the basis upon which other Métis Aboriginal rights can be argued. The decision will have implications for governments for an incredibly wide range of areas beyond just the regulation of hunting. For the federal government areas of possible implications span fisheries policy, to the 'duty to consult and accommodate,' to Aboriginal social programs, to national parks and monuments, to land and rights claims that overlap with those of other Aboriginal peoples, to Aboriginal participation in revenue-sharing and development agreements. Essentially, the *Powley* decision has placed Métis issues on the policy map.

Together, the Office of the Federal Interlocutor for Métis and Non-Status Indians (OFI) of the Department of Indian and Northern Affairs Canada, with the assistance of the Métis and Distinctions Team, Aboriginal Law and Policy Section (ALPS) of the Department of Justice Canada, led a Post-*Powley* Response Working Group with representation from a number of interested federal departments. A major early task of this working group was to come to an understanding of the implications of the *Powley* decision for the federal government. In order to understand the ramifications of the *Powley* decision it was necessary to start a process of inquiry to come to an understanding of to whom the *Powley* decision would apply.

The Supreme Court, in the *Powley* decision, outlined a basic legal test that an individual would need to pass in order to be considered "Métis" for the purposes of asserting Aboriginal rights under section 35 of the *Constitution Act*. The major criteria – or "*Powley* test" – were threefold; the individual must:

1) identify as a Métis person;

2) be a member of a present-day Métis community; and,

3) have ties to a historic Métis community.

Further to the third criterion, to be considered a 'historic rights bearing community' it must be proven that a mixed-ancestry group of Indian-European or Inuit-European people:

a) formed a 'distinctive' collective social identity;

b) lived together in the same geographic area; and,

c) shared a common way of life.

In addition, this historic community must be identifiable prior to the time when Europeans established 'effective political and legal control' in the geographic area.

Consequently, the Research and Statistics Division (RSD) in consultation with, and on behalf of DOJ Aboriginal Law and Strategic Policy, and the Office of the Federal Interlocutor for Métis and non-Status Indians (INAC), developed and managed a program which included 15 history-based research projects. These particular research projects were designed to explore the

[4] This paper is a partial summary of a presentation ("Researching Historic Métis Communities: Applied Research on Métis Ethnogenesis in the post-Powley Era") made at the 2006 Aboriginal Policy Research Conference in Ottawa.

[5] "Ethnogenesis" is the term used for the emergence of a culturally distinctive people who are considered to represent a new and unique ethnicity. (For instance, Ethnogenesis. *Oxford English Dictionary*, On-line, Second Edition, 1989. Accessed October 2, 2007 from http://dictionary.oed.com.)

history related to possible Métis ethnogenesis and the imposition of 'effective European control' in selected sites across Canada.[5] This in turn, would provide information which might be used to discuss the possible existence of particular historic Métis communities across Canada and, generally, provide data with which to inform discussions that would assist in developing an understanding of how to interpret and apply the *Powley* decision.

## Methodology

The development of the research projects was constrained by the reasoning and conclusions laid out by the Supreme Court. Thus, specific geographic areas were selected as the main frame of analysis. After preliminary study of the academic literature in the field of Métis ethnogenesis, fifteen study regions were selected through consultation with interested federal government departments. The sites were selected to provide a wide a range of historiographical situations, a broad range of different models of ethnogenesis, research in study areas where little had been published, all in areas where the federal government had a possible policy interest.


**Figure 1 – Map of Study Regions**

The studies covered the geographic areas in the vicinity of:

1) Lower Fraser River Valley, BC
2) Central British Columbia, BC
3) Western Mackenzie Drainage Basin, BC/YK
4) Wabasca-Desmarais Settlement Area, AB
5) Northeastern Alberta, AB
6) Great Slave Lake, NWT
7) Lower North Saskatchewan River, SK
8) Cumberland Lake, MB/SK
9) Northern Lake Winnipeg, MB
10) Lake of the Woods, ON
11) James Bay, ON
12) Outaouais River, QB
13) Northern New Brunswick, NB
14) Southern Nova Scotia, NS
15) Côte Nord, QB

Through a competitive process experts in researching historical Aboriginal communities were selected to undertake research in each of the study areas. They were tasked by the Research and Statistics Division to uncover and present what documentary evidence existed that could address a number of research questions, which could assist the reader in coming to an understanding of the possible ethnogenesis of a Métis community in the area and information regarding a possible date of 'effective European control'.[6]

There is no agreed upon definitive criteria by which anthropologists, historians or sociologists determine an exact point of ethnogenesis. Nor did the *Powley* decision clearly enumerate the interpretive boundaries surrounding the concept of 'effective European control'. Additionally, the historical method is constrained to data which was written down during the historic period and which was archived and conserved until the present-day. Therefore, wide latitude was provided to the researchers regarding the scope of the research questions, details of the historical research approach and techniques of analysis.

[6] Oral history evidence was specifically excluded as a line of evidence from these studies. This decision was made for a number of reasons, mainly being that the time and funding allotted for this raft of projects was not of a scale sufficient to adequately apply these methodologies. As these reports draw no conclusions regarding the existence or non-existence of rights bearing historic Métis communities, their production does not exclude the utilization of oral history evidence being considered by the courts or policy-makers.

The research questions were clustered into three groups: those that might be used to determine ethnogenesis, those related to distinctive culture, and possible indicia of 'effective European control'. Questions that spoke to ethnogenesis asked the researchers to collect what information existed for individuals of mixed European-Indian and/or mixed European-Inuit biological ancestry in the areas of historical demographics, residency pattern, self-identification, other-ascription of group identity, linkages between individuals, and migration and marriage patterns.[7] The second set of research questions asked the researchers to explore the defining traditions and customs, economic activities, cultural features, and geographic territory of any distinctive mixed-ancestry community.

## The Textbook Story

There is an extensive and voluminous literature devoted to the history of Métis people and the Fur Trade era in Canada. There is a focus on those groups connected to the historic Métis community of the Red River Valley with regard to the ethnically distinctive communities of mixed-ancestry people. At times, writing on the history of mixed-ancestry people - especially popular accounts of Métis history, is reified and mythologized.

This article does not have the space to provide a detailed historiography of writings on Métis history. However, it is important to have some grounding in the broad contours of this 'textbook story' as taught to most Canadians, as the highlights of the emerging research trends are largely reactions against a simplified story line.

When European colonists – the French and the English – arrived in what would become Canada one of their major economic activities was trading for furs with First Nations people. Under the legal customs of many First Nations trading alliances were solidified through kinship ties and European men often were in need of mates and domestic companions. The progeny of such conjugal unions, called 'country marriages' in English and 'mariages à la façon du pays'[8] in French, were of mixed biological ancestry; possessing elements of the cultural heritage of both parents. Sometimes such children joined their mother's communities and their descendants took on their mother's ethnicity. In more rare cases the descendants of mixed ancestry children might be absorbed into (mainly European) settler communities. In some areas of the country, many mixed-ancestry children grew up and raised their own families in communities that were both biologically and culturally mixed European-Indian.

The particular history of the fur trade in Canada's west is of primary importance in the shaping of Métis ethnicity. The two dominating fur trading concerns were the North West Company, headquartered and trading out of Montreal, and the Hudson's Bay Company (HBC), headquartered in London, England and trading out of Hudson's Bay. Merchants of lowland Scottish origins largely directed the North West Company (NWC), while most ethnically European employees were of French-Canadian extraction. The Hudson's Bay Company was managed by English men, while the ethnically European employees were mainly Scots from the Orkney Islands or Scottish Highlands.

The competing business interests, differing corporate cultures and policies towards interactions with First Nations peoples have been identified by historians as contributing to enmity between the two companies and to the shifting manner with which ethnicity and nationality were defined in regions touched by the fur trade prior to confederation. Indicative of this is the Battle of Seven Oaks in 1816 between North West Company supporters and Hudson's Bay Company supporters, the Red River Rebellion in 1870 and the North-west Rebellion in 1885, and might be extended to battles between mixed-ancestry people and other groups such as the Battle of Grand Coteau in 1851 against the Sioux.

[7] In the interests of simplification the phrase 'mixed-ancestry' is often used to stand for the phrase 'mixed European-Indian and/or mixed European-Inuit biological ancestry'

[8] In English, this might be translated as 'marriage according to the custom of the country.'

Aside from this history of conflict and fur trade enmity as factors in Métis ethnogenesis there are other popularly recognized currents to this history. These include Foster's hypothesis (1994) of "wintering" "outsider males," which highlights the importance of European males over-wintering in First Nations communities, as well as the later independent "freeman" bands of individuals retired from the fur trade but still local to the region. Historians such as Brown (1983) have been uncovering the importance of the liminal, bridging role of "country wives" and mixed-ancestry women in the gendered interaction between social groups.

One result is the 'textbook story' of Métis people existing in the popular imagination mainly as children of the western fur trade, products of conflict in the Red River Valley, standing firmly with cultural heroes such as Louis Riel, Cuthbert Grant and Gabriel Dumont. The markers of this history are inscribed in the cultural markers of the fur traders': the 'ceinture fleché' sash, a particular style of fiddle music and jigging, an infinity symbol flag originating in the conflicts between the North-west Company and Hudson's Bay Company, a technology of cartage (the Red River Cart), and an association with the economy of the buffalo hunt. All hearken back to a particular time and place of birth for a particular conception of Métis identity.

## Highlights of Selected Reports

The *Powley* decision allows for a broader view of what might constitute Métis history. Although, perhaps, utilizing much of the logic behind the standard story of Métis ethnogenesis, the Supreme Court allowed for a broader vision for the possible emergence of section 35 rights bearing mixed-ancestry communities. A number of the research projects highlight the historiographical considerations that need be considered in researching Métis ethnogenesis, thereby outlining where the standard story of Métis ethnogenesis might be augmented.

In the study of the James Bay area (Reimer and Chartrand 2005) the researchers primarily relied upon a sample of the vast number of Hudson's Bay records drawn at roughly five year intervals. They applied a kinship and genealogical analysis to these materials, cross-referencing with other historic records using an ethnographic lens. They found that even though the area was always dominated by the HBC, 'country marriages' did occur with frequency. Hierarchy and class were important determinants of marriage patterns, identity choice, and adult place of residence; all of which may have impacted upon the ascription of ethnic identity. Thus, evidence was uncovered that other sources of social tension, such as classism and ethnocentrism, might have interacted to create social cohesion amongst groups that could have an ethnic character; even without independence from the fur trade or a 'threat' event.

In contrast to the previous anthropological study, the study of the Southern Nova Scotia area (Brown and Riley 2005) was very textual. The study area had a very different history that was not strongly grounded in the fur trade and there existed only a scant set of historic records from which to draw. Their approach was solidly historiographical and included elements of textual analysis. A way to characterize the approach is that they examined the retelling of Nova Scotia's mixed-ancestry story over time. In this way they were able to comment upon the historical validity of previous histories written on the Métis history of the area, which was essentially a history dominated by the writing of Rameau. This research largely deconstructed assumptions which may have been over-extended by previous writers and commentators, outlining the contours of how far a reader might realistically take the existing evidence.

The study of the Wabasca-Desmarais Settlement area in Alberta (Lacompte, et al. 2005) used a familiar historical approach to research and analysis. However, the isolated, small communities existent in the area provided some interesting observations. For example, though a western mixed-ancestry people, there was evidence that individuals in the area considered mixed-ancestry people of Red River to be different. An example of this difference was their different fiddling and jigging styles. As with other studies, such as the Cumberland Lake study (Cottrell, et al. 2005), once the researchers point of analysis came to rest on the individual, rather than the group, complexities emerge regarding the possibility of switching ethnicities or holding multiple ethnicities depending upon circumstance. For instance, in the region the major point of 'effective European control' was the simultaneous arrival of the Half-breed Scrip Commission and the Treaty 8 Commissioners. In effect, people were given a choice of

becoming "Métis" in the eyes of the government and getting a land certificate that was also redeemable in cash or becoming a Treaty Indian and becoming a part of a band with a communal land base and a relationship to the Crown. As a result, contrary to stereotype, mixed-ancestry people living more settled lives may have often opted to become Treaty Indians to solidify the roots of their families in the area, while those living more nomadic, subsistence lives hunting and gathering lives might have opted to take Métis scrip to remain unencumbered, by obtaining useful liquid capital.

While the Wabasca-Desmarais study highlighted the cultural permeability of biologically similar populations between the categories of Métis and Indian, the Côte Nord study (Turgeon, et al. 2006) identifies a shared mixed-ancestry culture of marginally mixed biological groups. The methodology of the study combined a detailed genealogical analysis with a semantic analysis of ethnic terminology and research on the historic culture of costal communities. The researchers found that the largely mixed Inuit-European families participated in a distinctive, local culture that drew elements from First Nations, Inuit and European societies. However, people of sole European ancestry living in the communities participated in the same local culture and were often called by the same social labels. Thus, indicating a situation where existed communities that may have been culturally mixed, while being only partially biologically mixed.

The study of the Great Slave Lake area (Jones 2006) used the methodology of 'collective biography' to elucidate the social history of groups. This research shows that the particular personal history of family groupings can impact on the way in which they are positioned ethnically. In the region, there appear to have been multiple manifestations of mixed-ancestry groups from a 'new tribe' composed of mixed-ancestry people to wage dependant people of mixed-ancestry sub-contracting to fur traders and explorers. With different waves of immigration, the experience of being of mixed-ancestry or Métis shifted. Interestingly, this appears to be the only study region in which the historic record shows mixed-ancestry people's residence in the region prior to the arrival of Europeans.

A method similar to the 'collective biographical' method of the Great Slave Lake (Jones 2006) study was used in the study of the Central British Columbia area (Thomson 2006). This study relied heavily on the method of prosopography, which in some respects resembles a more quantitative form of collective biography.[9] Through fur trade occupational records and land pre-emption records the researcher charted personal and family relationships amongst people of mixed ancestry, which was compared to contextual information provided in fur trader and explorer accounts. A message conveyed by the author was that, for the study region, the practises of mixed-ancestry people often appeared to be largely the practices of the fur trade, fur traders could be constrained to act according to the custom of local First Nations, and that the ancestral origins of mixed ancestry individuals lay almost exclusively outside of the study region. Thus, in the two studies there is a contrast between mixed-ancestry people independent of the fur trade and mixed-ancestry people who were the agents of the fur trade.

## Methodological and Conceptual Lessons Learned

The researchers of these historical reports grappled with a number of difficult methodological issues in researching this subject, including which documentary evidence to target in their search for information on mixed-ancestry communities and how to best sample and interpret the archival evidence they were able to uncover. Each research team used a methodology which worked well to answer the research questions given the documentary evidence available to them for their study region.

As researchers were interpreting the evidence they uncovered and drafting their results, two conceptual

[9] Prosopography is "a study or description of an individual's life, career, etc.; esp. a collection of such studies focusing on the public careers and relationships of a group in a particular place and period; a collective biography. As a mass noun: the study of such descriptions, esp. as an aspect of classical history; such studies or histories as a genre." (Prosopography. *Oxford English Dictionary*, On-line, Second Edition, 1989. Accessed October 2, 2007 from http://dictionary.oed.com.)

issues were identified as being critical to presenting the materials in a way that would provide relevant information for detailed legal and sociological consideration. The first issue was the extreme care that needed to be taken regarding the difference between culture and biology, while the second was the related issue of the care required when using ethnic labels for mixed-ancestry peoples.

Ethnicity is a difficult concept to define. As Statistics Canada (2006) notes,

> [t]he concept of ethnicity is somewhat multidimensional as it includes aspects such as race, origin or ancestry, identity, language and religion. It may also include more subtle dimensions such as culture, the arts, customs and beliefs and even practices such as dress and food preparation. It is also dynamic and in a constant state of flux.

When collecting information that might be used to discuss a possible point of ethnogenesis for a historic Métis community, identifying what fact relating to an individual, group or community indicated a process of cultural or biological 'mixing' was central to being able to apply the *Powley* criteria and to discussing possible ethnogenesis. This is because ethnogenesis is not the mere result of the biological mixing of genetically discrete populations. Ethnogenesis is the result of cultural identification as an ethnically distinct social group by a population which interprets biological ties in a particular, socially relevant manner, and participates in a shared culture.

Ethnicity is, thus, a social construct of group identity that is often defined in terms of both cultural markers (such as religion and traditions) and biological markers (such as physical appearance or kinship). To complicate matters, in the historical record it can also be ascribed by individuals belonging to the group (for instance, 'I am Métis') or ascribed by outsiders (for instance, 'They are Métis').

It is a common error in writing on the history of mixed-ancestry people in Canada to imply an ethnically Métis community has emerged merely as the result of mixed-ancestral parentage, through the application of modern definitions of the term "Métis" to historic populations. The words used in the historic record confuse the issue, as the very word "Métis" originated as a simple descriptor for a person of mixed parentage in French, yet has eventually become an ethnic label in English. Thus, in addition, in different historic periods, for different groups, and in different languages the meaning of ethnic labels shifted with the context.

In order to address these issues in the research, it was determined that all ethnic labels for mixed ancestry people would be used as direct quotations from the original, primary documentary record. It is recognized that this might result in a more pedantic writing style and, perhaps, a possible perception of sarcasm when selections are quoted out of context. However, the advantage of not 'colonizing' the ethnic nomenclature of the past with the interpretations and debates of the present is critical in presenting as neutral an account of history as possible.

## Next Steps

Historical research can engender as many questions as it answers, as information is uncovered new complexities and the present-day implications of sets of historical facts and situations emerge. While these research projects have provided a wealth of information on the particular histories of mixed-ancestry communities across Canada, the information uncovered also highlight interesting questions regarding areas where more research and analysis may be required in order to address the complexity of intersection between mixed-ancestry history and the implications of historic Métis ethnogenesis. Future applied historical research on the subject of Métis ethnogenesis could explore issues of the:

- Connection between geographically discrete communities;
- Nature of the commercial practises of mixed-ancestry individuals;
- Rights implications of using differing historic tests for Indian and Métis rights;
- Existence of "hidden communities"; and,
- Issue of indigenaity and a lack of "blood quanta" in the definition of Métis.

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*R. v. Powley* [2003] 2 S.C.R.

*Constitution Act,* 1982, s. 35 ▲

# Understanding Family Violence and Sexual Assault and First Nations, Métis and Inuit Peoples in the Territories[10]

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## Introduction

Findings of the Royal Commission on Aboriginal People and subsequent reports on violence and First Nations, Métis and Inuit Peoples assert that family violence and abuse, and First Nations, Métis and Inuit Peoples are rooted in the effects of the colonization process, including the Indian Residential School processes, and subsequent intergenerational legacies of violence. In the research undertaken here, data were gathered to enable an analysis of the relationship between family violence and sexual assault offences, and the accused's personal history of violence.

## Background

A significant finding of the Royal Commission on Aboriginal Peoples (RCAP, 1996) was the high level of violence in First Nations, Métis and Inuit communities. The 1996 report of the Commission noted that:

> In the midst of devastating revelations of the violence suffered daily by Aboriginal people, frequently at the hands of the men in their families, we were urged to recognize that men are victims too. …Revelations of the extent of sexual abuse of both boys and girls in residential schools, the fact that victims of abuse often become abusers, and the shame that leads men in particular to hide these experiences are all coming to the fore. Aboriginal people in the health care field now believe that Aboriginal men have suffered more sexual abuse as children than previously believed, and they are, in all probability, as devastated by these experiences as women have been (p. 57).[11]

Research undertaken following the RCAP reports, such as, Lane Jr, Bopp and Bopp (2003), Brant Castellano (2006), and Chartrand and McKay (2006), among others,[12] have further investigated this link between personal and collective histories of violence and First Nation, Métis and Inuit Peoples as victims and offenders. Chartrand and McKay (2006) in their work on victimization and First Nations, Métis and Inuit Peoples concluded that:

> Explanations for such high rates of victimization are varied but the predominate view links high victimization to the overall impact of colonization and the resultant collective and individual "trauma" and its impacts that flows from cultural disruption. Furthermore, the need to break the cycle of family violence that has become internalized is identified throughout the literature as a critical step in reducing criminal victimization (p.v).

Lane Jr. et. al (2003), in their undertaking to develop a comprehensive theoretical framework in which to understand the dynamics of this violence, write that "this body of research, theories and models all point to the same general conclusion - family violence and abuse in Aboriginal communities has its roots, at least in part, in historical trauma and in the social realities created by those historical processes" (p.22). They argue that post-traumatic stress disorder (PTSD), and complex post-traumatic stress disorder (CPTSD) is the effect of these processes on individuals.[13] Based on this they develop a theoretical framework within which PTSD is a key component. They write:

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[10] This article is an excerpt from a forthcoming larger report with the same title.

[11] Royal Commission on Aboriginal People, at http://www.ainc-inac.gc.ca/ch/rcap/sg/ci2_e.pdf.

[12] See for example, Pauktuutit Inuit Women's Association, 2006; Qullit Nunavut Status of Women Council, 2004; Levan, 2003; Métis National Council of Women Inc, 2002; Crnkovich and Addario, with Archibald, 2000; Giff, 2000; Save the Children, 2000; Dion Stout and Kipling, 1998.

[13] Herman (1997) defines PTSD as a predictable psychological response in people who have endured horrible events, and she includes war veterans, prisoners of war, and victims of family violence and sexual assault. CPTSD is the result of repetitive, extensive, and all encompassing trauma that intensifies the symptoms of PTSD. Herman notes that the American Psychiatric Health Association included post traumatic stress disorder in its official manual of mental disorders in 1980.

> Domestic violence and abuse are almost always linked to trauma in several ways. Certainly, abuse causes trauma in victims, as well as in children witnessing violence. But, domestic abuse is also and most often the *result* of intergenerational trauma. So, trauma is both one of the primary causes and principle outcomes of domestic violence and abuse (p. 10).

The research undertaken here further investigates this link. It focuses specifically on territorial data because of the high rates of crimes of violence there. In 2005, the police reported sexual assault rate in Canada overall was 7.2 per 10,000 population; in the territories rates ranged from a high of 79.7 per 10,000 in Nunavut, to 40.7 in NWT, and 18.1 in the Yukon (Gannon, 2006). The objective of the research conducted here is to further the understanding of the specifics of the current dynamics of violent offences ultimately in order to better understand how best to mitigate them.

Research was undertaken using Crown Prosecutor files across the three territories as these files include information on the offences, the accused, and the victims. Working within the framework above, data were gathered on reported personal histories of sexual abuse, physical abuse, or psychological abuse of the accused. In addition, data were also gathered on substance abuse as this is increasingly being recognized as self-medication in response to physical or sexual trauma (Chansonneuve, 2007). It should be noted that history of accused's early victimization may be under-reported in these files as the purpose of prosecution is to establish current wrongdoing of perpetrators, and not their past victimizations. The relationship between the offender and his or her own personal history of abuse, therefore, is likely higher than the findings in this research.

There is another significant caveat. Family violence offences and sexual assault offences are proposed here as individual outcomes of ongoing personal, historic and social realities. As RCAP noted in their report on family violence:

> While family violence experienced by Aboriginal People shares many features with violence in mainstream society, it also has a distinctive face that is important to recognize as we search for understanding of causes and identify solutions. First, Aboriginal family violence is distinct in that it has invaded whole communities and cannot be considered a problem of a particular couple or an individual household. Second, the failure in family functioning can be traced in many cases to interventions of the state ( RCAP, p.54)[14]

## Findings

There were a total of 7,175 Crown Prosecutor files on family violence cases (4,985) and sexual assault cases (2,190) across the territories between January 1, 2000 and December 31, 2004. A sample total of 1,474 files was drawn using a stratified random sample. This sample includes 918 files of family violence offences, and 556 files of sexual assault offences.

### Relationship between personal history of abuse, and sexual assault and family violence offences

The findings indicate a strong relationship between violent offences and offender's history of abuse. A majority, i.e., 66%, of those accused of a sexual assault offence had at least one form of abuse in their personal history, as did 77% of those accused of a family violence offence. Therefore, using these data, there is evidence that a personal history of victimization is a factor in the dynamics of family violence and sexual assault offences. These data underscore Lane et. al (2003)'s discussion of trauma as both one of the primary causes and principle outcomes of domestic violence and abuse in Aboriginal communities.

A cycle of violence is further evidenced in the rate of repeat offending. The majority of the accused had at least one prior conviction for a violent offence. This includes 69% of those accused of a sexual assault and 79% of those accused of a family violence offence. Table 1 provides the data for most relevant prior convictions.

[14] Royal Commission on Aboriginal People, http://www.ainc-inac.gc.ca/ch/rcap/sg/ci2_e.pdf.and Kipling, 1998.

**Table 1: Prior convictions of accused**

| Prior convictions: | Sexual assault accused | Family violence accused |
|---|---|---|
| Sexual assault | 24% | 9% |
| Family violence | 14% | 37% |
| Assault | 44% | 58% |

Among the 69% of the sexual assault accused who had a prior conviction, on average, the accused had 11 prior convictions in both Nunavut and NWT. The average number in the Yukon was higher at 15. The median number of priors was 7 for both Nunavut and NWT, and 10 for the Yukon.

Among the 79% of those accused of a family violence offence who had a prior conviction, the average number of prior convictions were very similar to those accused of sexual assault: 11 for both Nunavut and NWT, and 14 for Yukon, and medians similar at 6, 9 and 10 respectively.

Such a high number of prior convictions can be seen as somewhat of a "revolving door" in and out of the criminal justice system which raises questions of the efficacy of the system response. Of relevance here is His Honour Chief Judge Barry Stuart's discussion at sentencing M.N.J., a young, Aboriginal, violent, sex offender (Yukon Territory Court, 2002). Judge Stuart writes:

> [29] The sentencing guidelines emanating from the Supreme Court of Canada in *R. v. Gladue* [1999] 1 S.C.R. 668 and *R. v. Wells* [1998] 2 S.C.R. 514 call upon the court to consider the dysfunctional backgrounds of offenders in developing an appropriate sentence. To gain a better comprehension of M.N.J.'s personal history, all court records were gathered and made available to the counsel and to the court.
>
> [30] While all of these accounts do not tell the full story, the story they do tell reflects the kind of dysfunctional background that fostered concerns raised in *R. v. Gladue, supra*. …
>
> [31] Mr. M.N.J. was born … 1980…. His mother … was 18 years old, and his father… was 19 years old. Before he was seven months old, his parents left him to be cared for by his maternal grandparents…
>
> [32] Within the first year in the home of his maternal grandparents, Family and Social Services became involved. Once, M.N.J. was discovered in the home unattended by any adult. Twice he was admitted to the pediatric ward for ailments that reflected possible neglect ….
>
> [35] Over the course of the next five years, M.N.J. principally lived with D.J. and L.S.. During this period, he is repeatedly taken into, or voluntarily placed in, the care of the department. D.J. and L.S.'s home, the only family home M.N.J. knew, was not just chaotic due to the number of other children, but in his home he was severely victimized by his family. The information before the court indicates M.N.J. was sexually and physically abused by uncles living in the home. Often neglected, emotionally and physically, when he became too difficult or simply too much to look after, he was given to, or taken by the department. When D.J. was "broke and overwhelmed", M.N.J. was dropped off at the department for months at a time.
>
> [36] The records are full of references to circumstances in the home that indicates extensive and continued neglect of M.N.J.'s basic needs. Nothing in the evidence suggests this home provided, or could provide, a nurturing home for any child, but especially for a child abandoned and brutalized by his natural parents. Since 1981, doctors, public health nurses, teachers, foster parents and people in the community have reported to the department various concerns about the abuse and the neglect M.N.J. suffered.

In his Initial Comments, Chief Judge Barry Stuart writes:

> [1] M.N.J., 21 years old, raised as a ward of the state until 18, will spend up to eight years in jail for a horrible crime.
>
> [2] His sentence sets a precedent for the next case. There will be a next case. There have been many

> other similar cases. There are right now, within our communities, within our institutions, children, young boys, young men, with stories similar to M.N.J.. Unless we change what we do – we as families, communities, professionals – there will be many more "next cases". How many M.N.J. do we need before we appreciate that if we always do what we have always done, we will always face what we always face – the next case to sentence, the next victim to heal.
>
> [3] The next case, like so many before, will leave in its wake the broken lives of victims; shattered families; angry, fearful and frustrated communities; burned out, despairing professionals, and young men sitting in jails growing more disconnected, more hopeless and ultimately more dangerous.

This sense of frustration has been echoed by a number of Crown Prosecutors in the North. Rupert Ross, Assistant Crown Attorney with primary responsibility for conducting prosecutions in some 20 remote fly-in Aboriginal communities in north-western Ontario, writes[15] that the:

> first line of social response to these symptoms of community, family and individual traumatisation is, unfortunately, the criminal justice system, and it is my growing conviction that it is substantially incapable of responding productively in this context of unique and deep-seated traumatisation, for a wide variety of reasons (pp. 4 to 5).
>
> …domestic violence has reached frightening levels in some communities, but prosecution is almost impossible. For one thing, poverty, derelict housing and large families impose hardships on abused women that they can seldom endure on their own. The majority of abused women who see their husbands taken out to jail find themselves incapable of hauling wood and water on their own, as well as feeding and clothing children – and keeping the drunks at a safe distance at night. On a routine basis they are forced to conclude that *his abuse is preferable to his absence*, and they refuse to support a prosecution that will result in his removal (p. 5, emphasis in the original).

Speaking of a specific case, he writes:

> In January of this year [2006], I went into one community to do four trials, only to find that police had never interviewed essential witnesses, despite written requests. When I asked why, [I was informed that] five teenagers … had hanged themselves; four had died and the fifth was on life-support (p. 4).

This is the socio-legal context within which a majority of these crimes occur.

Given the relationship between history of abuse and violent offending, one would expect the same link between offence and offender's history of abuse among non-Aboriginal offenders as well. In the file review conducted here, the relationship does hold for the non-Aboriginal territorial offenders. Where 70% of First Nations and Métis and Inuit sexual assault offenders in the territories had a personal history of violence, so did 69% of non-Aboriginal sexual assault offenders. For family violence offenders, where 77% of Aboriginal family violence offenders had a history of abuse, 73% of non-Aboriginal family violence offenders did as well.

These findings are in keeping with the findings of previous research. Bonta, LaPrairie, and Wallace-Capretta's (1997) assessment of Aboriginal and non-Aboriginal risk and needs in the prediction of recidivism write that their most important finding was that a risk/needs classification instrument originally developed on a sample of non-Aboriginal offenders demonstrated predictive validity among Aboriginal offenders, which implies that risk factors are similar for Aboriginal and non-Aboriginal offenders.

While personal history of abuse is not the only factor related to violent behaviour, the research completed here indicates that it may be one of the stronger predictors.

[15] "Traumatization in Remote First Nations: An Expression of Concern," unpublished report.

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# Report on "Forum on Justice System Responses to Violence in Northern and Remote Aboriginal Communities"

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A forum on violence in northern and remote First Nations, Métis, and Inuit communities was organized by the Department of Justice Canada in Ottawa on March 30, 2007. [16] The impetus for the timing of this forum was two papers written by Rupert Ross,[17] Assistant Crown Attorney responsible for a number of fly-in remote communities in north western Ontario. In his paper on traumatization in remote First Nation communities Ross noted:

> I offer this memorandum to convey my growing concerns, after 21 years doing courts in the remote First Nations of Northwestern Ontario, that individuals, family and community traumatisation in a number of the First Nations is now so pronounced that in many respects the criminal justice system has been rendered powerless to effect significant change. In fact, I believe that in some respects its normal application may operate as an **obstacle** to necessary community healing (emphasis in the original).

A number of other Crown Prosecutors in the north expressed similar sentiments, along with a profound hope for finding more effective responses for much needed long-term solutions. Thus the Forum was organized to explore justice system responses.

The forum began with the prayers of Elder Annie Kishkwanakwad Smith St. George, followed by two panels: the first focussed on criminal justice professionals' work in northern and remote First Nations, Métis and Inuit communities, and the second focussed on community and program responses.

The panel of criminal justice professionals was chaired by Stuart Whitley, QC, Senior Regional Director, Department of Justice Canada, Office of the Northern Region,[18] and included Rupert Ross, Assistant Crown Attorney, Ontario Ministry of the Attorney General, as key presenter, and Bonnie Tulloch, Director, Public Prosecution Service of Canada, Nunavut Regional Office. Each of these speakers had years of service in northern communities, and delivered impassioned presentations on their experiences with disconnected youth, and the severity of the violence, substance abuse and escalating suicide rates in those communities.

Rupert Ross reported that the negative repercussions resulting from residential school experiences are irrefutable. Based on his years of experience and analysis, he stated that in many communities it is likely that two generations of children have grown up amid levels of alcohol abuse, family violence and sexual abuse that are unparalleled elsewhere in Canada. There is an increasing understanding of the psychological impact of residential schools and how the effects extend to both the children who were extracted from their families, and to those who were left behind. He reported that in some areas, whole communities are severely traumatized, and estimated that 60-80% of the population in these communities have been victimized by serious sexual abuse - primarily at the hands of extended family members, and up to 50% have been victimizers. Further, an Executive Director of an Aboriginal alcohol treatment centre reported that 100% of her clients disclosed childhood sexual abuse as a primary force behind their alcoholism.

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[16] The forum was a collaborative undertaking of the Strategic Initiatives Unit, as part of Canada's Action Plan against Racism; the Office of the Northern Region; the Family Violence Initiative of the Family Children and Youth Section; the Research and Statistics Division; and the Intergovernmental and External Relations Division.

[17] Rupert Ross, "Traumatization in Remote First Nations: An Expression of Concern," unpublished paper. Rupert Ross, "Discussion Paper: Exploring Criminal Justice and the Aboriginal Healing Paradigm," unpublished paper.

[18] Since this Forum, Mr. Whitley has left the Department of Justice to work with the Yukon Territory Government.

Based on these inter-generational effects, Ross posited that a large portion of those populations likely suffer from Complex Post Traumatic Stress Disorder (CPTSD). The disorder is a clinically-recognized condition that describes the pervasive negative impact of chronic trauma that results from prolonged exposure to physical abuse, sexual abuse, domestic violence, torture, and war. It affects the sufferers' sense of safety, trust, and self-worth, their tendency to be re-victimized, and their loss of a coherent sense of self.[19] Other panellists reported similar experiences and also spoke to the number of northern and remote communities they see suffering from inter-generational CPTSD.

Other presenters confirmed Ross' assertion that so little of the violence is ever reported, and rather, is just sublimated. Presenters gave multiple reasons why Aboriginal people are reluctant to participate in the formal justice system. Key reasons included a fear of allying with outside forces and lack of supports for victims who decide to speak out. Most importantly, Aboriginal approaches to justice are based upon relationships of interdependency whereas the mainstream justice system focuses on offenders strictly as individuals and crimes are treated in isolation from the context in which they occur. Accountability, in what Rupert Ross described as a "relational paradigm," does not come from the same place in Aboriginal approaches to justice as in the mainstream criminal justice system. Accountability in the Aboriginal approach leads to healing, while mainstream systems are, in part, based upon the premise that punishment can force people to make better choices, and deter particular behaviours.

Presenters at the forum agreed that, in far too many cases, mainstream systems are currently ineffective at addressing familial and community violence, and may even be exacerbating such problems. Mainstream systems can cause further harm to both offenders and victims. Presenters agree that although mainstream systems are the primary response, they are inadequate to end violence, especially in small northern and remote communities where community resources are scarce, and offenders often return more violent than before.

Looking at violent crime in northern and remote communities through a "trauma" lens should allow for new solutions to be found. However, Rupert Ross cautioned that we should be careful in using a western understanding of traumatisation because of the tendency to pathologize, which could lead to the creation of inappropriate treatment options. Presenters further agreed that mass inter-generational traumatisation requires a mass recovery strategy. A more relational approach, rather than an adversarial one, would be more amenable to creative solutions outside a justice system "box" for recovery strategies. In order to alleviate the high rates of violence, Aboriginal communities have to find their own mechanisms to hold people accountable and engage the healing process.

In her work, Bonnie Tulloch observed that to dealing effectively with violence in these small northern and remote communities requires patience and flexibility, a non-judgmental attitude, a strong desire to listen more than to speak, being prepared to "think outside the box," and to set aside preconceived ideas. In addition, communities need to have ownership of their programs, and the mainstream criminal justice system and the communities need to engage future generations to sustain the efforts.

There was consensus among panellists that solutions have to come from and be designed by the communities themselves. The role of the outsider is one of support, to give communities the tools they require for healing. Governments could facilitate the healing process by providing training to the justice community and the general population, and creating positive situations within which Aboriginal communities could develop their own accountability or justice mechanism. Rupert Ross maintains the criminal justice system should function as a partner, as well as a mechanism that facilitates the healing process.

[19] For further information on post traumatic stress disorder, see Judith Herman, *Trauma and Recovery: The Aftermath of violence – from domestic abuse to political terror*. N.Y.: BasicBooks, 1992.

The discussion of the first session led to the afternoon session of panellists who were, for the most part, directors of Aboriginal-centred programs who respond to drivers, as well as the fallout. Karen Green, A/Senior General Counsel and Executive Director, Federal Centre for Workplace Conflict of the Department of Justice Canada, chaired this session. Panellists included Dr. Mike DeGagné, founding Executive Director, Aboriginal Healing Foundation; Sandra Bryce, Manager, Family Violence Prevention Unit, Yukon Department of Justice; and Bronwyn Shoush, Director, Aboriginal Justice Initiatives, Alberta Solicitor General.

For Dr. DeGagné, the success of initiatives to address violence in northern and remote Aboriginal communities lies within a balanced approach. Initiatives should start at the grassroots level and gradually build on successes and best practices. In his experience in order for communities to achieve their goals there needs to be healing through a return to traditional culture. Dr. DeGagné also highlighted problems with the current funding structure which does not provide core funding for programs, leaving successful programs to spend an inordinate amount of time on yearly funding applications, resulting in insecurity for service providers and clients who are often in dire need of programming. Moreover, the current funding structure also permits even excellent programs with clear measures of success to come to an end, sometimes in mid-program or healing cycle. He argued that rigid accountability structures could not be layered on as a way of managing risk for front line workers or programs, especially in remote distressed communities that, when programs end mid-stream, are then left more vulnerable.

Sandra Bryce and Browyn Shoush gave numerous examples of communities that have found solutions. They each reported on programs that provide training to justice professionals. Other programs are aimed at building relationships between prosecutors and Aboriginal communities. For instance, Community Wellness Courts have been established in the Yukon. These courts focus on victims and family violence and have seen positive results with respect to reconciliation between victims and offenders. An example which continues to show positive results, is the Alberta Eden Valley Community Pilot Project that was implemented to deal with the pervasive effects of prescription drugs and violence that flows from that abuse.

Other panellists also gave examples of successful programs in their jurisdictions. Muskrat Dam (Ontario), for example, has an intensive five week residential program for whole-family healing. It proved so successful that the waiting list is impossibly long. Another community-initiated and developed program, Hollow Water in Manitoba, is so successful that they are flooded with the number of people coming forward requesting to be allowed to partake in the treatment. Indeed, other First Nations communities are asking to take part in their programs. There are many, many excellent programs which have succeeded or have proved they could succeed.[20] All speakers agreed that in order for this agenda to go forward, commitment was necessary at every level.

Elder Smith St George closed the forum with these words:

> Over time we have been faced with years of oppression [sic], and for that reason things cannot change overnight. We need to start in the communities. We need to be looking at healing, not only looking at a particular community but looking at communities broadly. There are two categories of women; women on reserves and women off reserves; Métis, on reserves, off reserves, we have to look at them all. We have to start somewhere, from our hearts; from our own bones; we have to start listening to us here, before we can start caring and healing other communities. ▲

[20] In preparation for the end of funding, the Aboriginal Healing Foundation produced a report on the most successful practices across successful programs. See: *Final Report of the Aboriginal Healing Foundation, Volume III, Promising Healing Practices in Aboriginal Communities*, prepared by Linda Archibald, 2006, Ottawa: Aboriginal Healing Foundation.

# Opportunities in Aboriginal Research: Results of SSHRC's Dialogue on Research and Aboriginal Peoples

Craig McNaughton and Daryl Rock, Social Sciences and Humanities Research Council of Canada (SSHRC)[21]

## Purpose of the paper

In March 2002, as part of an overhaul of its strategic research programming, the Board of

Directors of the Social Sciences and Humanities Research Council (SSHRC) requested staff to develop Aboriginal research as a priority area. Working with advice from a number of key Aboriginal organizations and individuals, a decision was made to launch a thorough, multi-stage public dialogue with all stakeholders interested in research on, for, by and with Aboriginal peoples. Over 500 individuals from a wide variety of Aboriginal, academic, government and non-governmental organizations participated in SSHRC's Dialogue on Research and Aboriginal Peoples. This paper presents the results of the Dialogue in the form of both potential program initiatives and policy considerations.

## Structure of the paper

The paper is divided into two main sections:

- Section A offers a brief history of Council's Dialogue process – how the Dialogue was organized; who participated; and how, over time, the understanding of Aboriginal research has begun to shift;
- Section B proposes seven possible initiatives and outlines a process of ongoing assessment and evaluation designed to enhance program results.

## Essential argument in the paper

SSHRC's dialogue process has served to develop two complementary approaches to Aboriginal research – one focused on joint promotion of knowledge opportunities; the other on issues of equity.

The first approach envisions a set of measures focused on SSHRC's primary mandate – promotion of the *knowledge opportunities* available through collaborative initiatives such as:

1. creation of strong research partnerships with Aboriginal communities (via community organizations);
2. supporting research on Aboriginal systems of knowledge; and
3. strategic investment in the research capacity of Aboriginal and non-Aboriginal researchers interested in careers in Aboriginal research.[22]

The second approach envisions a set of measures designed to correct situations in which positive and full development of the research potential represented by Aboriginal researchers and their respective knowledge traditions is impeded:

- lack of career opportunities for Aboriginal scholars;
- lack of respect for Aboriginal peoples and their knowledge traditions;

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[21] This paper does not represent SSHRC policy. It reflects collaborative work by SSHRC staff and members of SSHRC's Dialogue on Research and Aboriginal Peoples to capture as accurately, sensitively and pragmatically as possible the many voices, perspectives and suggestions brought to bear on the process of developing an Aboriginal Research Agenda for SSHRC.

[22] The terms "Aboriginal" and non-Aboriginal" are used provisionally in this paper, with a clear understanding that they do not accurately reflect the degree of actual diversity among the individuals and communities they are used to represent. There is no one "Aboriginal" identity, just as there is no one "non-Aboriginal" identity.

- lack of research benefits to Aboriginal communities; and
- lack of Aboriginal control over intellectual and cultural property.

## A. SSHRC's Dialogue process

*1. Aboriginal research*

The Dialogue on Research and Aboriginal Peoples reflects a clear shift away from the ways in which research has been understood and organized in relation to Aboriginal peoples. Once understood more as intriguing or pertinent research objects, Aboriginal peoples are increasingly seen as researchers and research partners conducting research within Aboriginal knowledge traditions, using Aboriginal methodologies as well as methodologies drawn from interaction with non-Aboriginal intellectual traditions.

At the same time, non-Aboriginal researchers are seen less as the conventional "external experts" and increasingly as equal partners involved in developing new understandings of Aboriginal knowledge and ensuring that research and research training directly benefit Aboriginal nations and communities.

In this context Aboriginal research is more a *method* of study than an *area* of study. In its emerging conception, "Aboriginal research" is research that derives its dynamic from traditions of thought and experience developed among and in partnership with Aboriginal nations in Canada and other parts of the world.

*2. Council's starting point on Aboriginal research*

In March 2002, SSHRC's Board of Directors identified four strategic priorities based on earlier consultations with the research community: culture, citizenship and identities; environment and sustainability; image, text, sound and technology; and, Aboriginal peoples.

"Aboriginal development" (the term used at the time to designate Aboriginal research issues) was understood as "an issue that is growing among several federal departments, [an area that has] been identified by the federal government as one of its priority issues…". Drawing on consultations with the academic community in 2001, it was recognized that a very wide range of Aboriginal research themes [were] possible: "cultural heritage (art, language, traditions); Aboriginal governance; health care; community development and healthy living; erosion of Aboriginal cultures; the role of Aboriginal women in traditional culture and modern society; Aboriginal identities vis-à-vis the 1995 Indian Act; best practices in developing strong aboriginal communities….".[23]

Indeed, the existence of a multitude of Aboriginal research themes was confirmed by the submissions received from both Aboriginal and non-Aboriginal researchers in September 2002 following the Dialogue's national call for briefs.

*3. An emerging paradigm shift*

SSHRC's Dialogue on Research and Aboriginal Peoples began in earnest with the arrival of an unsolicited brief from the Saskatchewan Indian Federated College (SIFC) in May 2002.[24] That brief introduced a theme that was to be confirmed again and again over the course of the Dialogue: the need to recognize a paradigm shift in Aboriginal research.

The SIFC brief opened with the observation that the Royal Commission on Aboriginal Peoples (RCAP) and other studies "agree that a significant element of the solution [to the costs of social problems facing Indigenous peoples] is the need to shift the research paradigm from one in which outsiders seek solutions to 'the Indian problem' to one in which Indigenous people conduct research and facilitate solutions themselves."[25]

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[23] Background information given to SSHRCC, March 2, 2002.

[24] SIFC was renamed the First Nations University of Canada on June 22, 2003.

[25] SIFC, "A Brief to Propose a National Indigenous Research Agenda," (May 8, 2002), p. 1.

The SIFC brief then went on to highlight a number of the characteristics of this new research paradigm:

- ensuring that Aboriginal communities benefit from research findings;
- moving away from what was characterized in the Dialogue as a persistent "epidemiological emphasis on the negative" in Aboriginal research;[26]
- placing research on Aboriginal people primarily in the care and custody of Aboriginal people;
- working to build up a substantial cadre of Aboriginal scholars to take on this research work;
- inculcating respect for collective rights in relation to legal provisions that tend to work best in supporting individual researchers;
- respecting Indigenous knowledge traditions and the knowledge held by Aboriginal Elders.

SIFC's advice was supplemented by input from members of the Canadian Indigenous
and
Native Studies Association (CINSA) at the 2002 Congress of the Humanities and Social Sciences and advice from an ad hoc guiding group assembled during the summer of 2002.[27]

These early interventions and meetings helped to shape the content of the national call for
briefs that went out in August 2002 to a wide cross-section of individuals working in Aboriginal, academic and government organizations.

*4. Securing the wider community's view*

Over fifty briefs were received in response to the national call from a good cross-section of individuals and organizations. This work reflected the input of at least 100 individuals, many working in discussion groups. These responses were synthesized in a 50- page synthesis paper.[28]

This synthesis paper served as the focal point for Council's first-ever national Round Table on Research and Aboriginal Peoples held on November 29, 2002, in Ottawa. The round table drew together 65 individuals from across the country – from the three major Aboriginal traditions (First Nation, Métis, and Inuit); from a cross-section of post-secondary institutions and disciplines; from federal, provincial and territorial governments; and, from community organizations.

The round table generated over 100 recommendations that were presented in a summary paper circulated in February 2003.[29] An invitation to review the summary paper recommendations was extended to the round table participants, those who had submitted the original briefs, and to a wide range of potential stakeholders in Aboriginal, academic and policy communities. The vice-presidents (research and academic) and scholars at Canadian universities and colleges were invited to review the recommendations, as were the presidents and memberships of all Canadian academic societies. The 600 participants in the federal Aboriginal Policy Research Conference (November 26-28, 2002) were also invited to provide their comments.

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[26] October 2002 submission from Cree and Métis scholars at Brandon University, working in consultation with Dakota, Ojibwa, Métis and Cree community members. See synthesis paper, "Synthesis of Briefs Received from the Fall, 2002 Consultation on Policy Directions related to Aboriginal Peoples; A discussion paper for the roundtable consultation, November 29, 2002," prepared by Lynne Davis, Bonnie Jane Maracle, John Phillips and Tessa Reed, p. 16, unpublished.

[27] Members of the guiding group included Marlene Brant Castellano and Lynne Davis from Trent University; Jo-Ann Episkenew and Winona Wheeler from SIFC; Jo-ann Archibald of the First Nations House of Learning at UBC; and Eleanor Bernard, Executive Director of Mi'kmaw Kina'matnewey in Nova Scotia.

[28] See note 27 above.

[29] A copy of the summary paper ("SSHRC's dialogue on research and Aboriginal peoples: What have we heard on what should be done?" February 18, 2003) can be found on the Aboriginal Research Yahoo! site (http://ca.groups.yahoo.com/group/Aboriginal_research/) See http://www.sshrc.ca/web/apply/program_descriptions/cura_e.asp.

Four electronic discussion groups were organized around the major themes used to group recommendations in the summary paper:

- Building a Strategic Partnership with Canada's Aboriginal Peoples
- Organizing Research with Aboriginal Communities
- Developing Research that Meets Aboriginal Priorities
- Facilitating Aboriginal Research Careers

By May 2003, some 350 people had joined the online discussions, including individuals from various Aboriginal nations (Inuit, Métis, Salish, Anishinaabe, Haudenosaunee, Lenape/Delaware, Cree, among others); from most regions of the country; from a wide range of academic disciplines and institutions; from Aboriginal community, professional and business organizations; from government agencies; etc.

In summary, this was not a cursory conversation among a few dozen scholars. Over 500 individuals from a wide range of backgrounds and occupations spent substantial time and energy advising SSHRC. While there are many individual points requiring continued discussion, there is agreement that a shift in approach is both emerging and needed.

## B. Program initiatives in Aboriginal research

Dialogue participants provided Council with two connected but distinct "strategic directions" that reflect relatively high levels of consensus and that appear to have a reasonable chance of success:

1. Joint exploration of knowledge opportunities; and
2. Equitable treatment of Aboriginal researchers.

Participants also identified seven possible program initiatives for Council's consideration.

These seven proposed initiatives reflect virtually all of the recommendations emerging from last fall's synthesis paper, the round table and the ongoing electronic discussion. These seven possible program initiatives are discussed below.

1. Aboriginal Community Research (ACR) Program

*Proposed program:*

This program would facilitate research initiated by Aboriginal community organizations with research mandates, in partnership with university and college researchers, as well as governments and other policy research organizations, on projects addressing key political, social, economic and cultural opportunities and challenges identified by urban and non-urban Aboriginal communities in Canada.

*Context:*

There is a very wide range of research interests and concerns that could be pursued through this initiative including: language preservation, cultural survival, poverty, health, healing, violence, self-governance, economic development, education, etc.

However, the firm recommendation from members of the Dialogue is that Aboriginal communities (i.e., various community organizations) be given the opportunity to decide on what the research priorities should be for their communities (each community's needs and capacities being different), with government policy people and academics making themselves available as allies working to support these community-based research initiatives.

The proposed program could draw fairly heavily on SSHRC's experience with the Community- University Research Alliances (CURA) program.[30]

*Prospective partners and funding:*

Working with input from Aboriginal organizations (e.g., Inuit Tapiriit Kanatami, Métis National Council, Assembly of First Nations, Congress of Aboriginal

[30] See http://www.sshrc.ca/web/apply/program_descriptions/rdi_e.asp

Peoples, National Association of Friendship Centres, regional associations), as well as members of the Dialogue group, SSHRC staff could approach federal and provincial agencies (e.g., Indian and Northern Affairs, Privy Council Office, Canadian Heritage, Statistics Canada, Justice Canada, Health Canada, the Canadian Institutes of Health Research, etc.) to identify which research areas of interest to Aboriginal communities these agencies might be interested in funding through Joint Initiatives.

*Adjudication:*

It was proposed that all members of the adjudication committee be either accomplished researchers or highly respected knowledge-keepers within Aboriginal traditions and be respectful of Aboriginal peoples and Aboriginal knowledge.

A majority of the committee would be Aboriginal researchers drawn from First Nation, Métis and Inuit traditions. The committee would include at least one Aboriginal Elder, drawn in rotation from the First Nation, Métis and Inuit communities.

The adjudication committee would advise Council regularly on needs met and unmet by the program.

*Training:*

The ACR program would include supplementary provisions for training and mentoring of both Aboriginal and non-Aboriginal students interested in developing their research skills within both Aboriginal and non-Aboriginal knowledge traditions.

*Knowledge mobilization strategies:*

Emphasis will be placed on knowledge mobilization strategies that primarily serve the interests of Aboriginal communities, and secondarily wider public interests.

*Program option:*

Some of the objectives of this initiative potentially could be realized within SSHRC's existing CURA program. One could envisage a concerted effort to encourage and accommodate proposals from Aboriginal community organizations.

2 Aboriginal Knowledge Systems (AKS) Program

*Proposed strategic initiative:*

This strategic initiative would support research on Aboriginal knowledge systems both in their own right and in the context of their interaction with non-Aboriginal systems of thought.

*Context:*

Modeled to some extent on SSHRC's revised Research Development Initiative (RDI) program,[31] the objective of this program is to mobilize Aboriginal knowledge, first, for the benefit of Aboriginal nations and communities in Canada, and then, for the benefit of Aboriginal and non-Aboriginal communities around the world.

The proposed AKS program gives special attention to research proposals geared to knowledge held by Aboriginal Elders. This knowledge is crucial for an understanding, development and application of Aboriginal knowledge – as well as for the well-being of Aboriginal communities and intellectuals. The program will be open to all researchers.

The AKS program adjudication committee would be tasked to assign importance to the proposals received in relation to two needs: (1) building-up, retrieving and restoring Aboriginal knowledge; and, (2) exploring the application of Aboriginal knowledge in relation to other knowledge traditions.

[31] A copy of the summary paper ("SSHRC's dialogue on research and Aboriginal peoples: What have we heard on what should be done?" February 18, 2003) can be found on the Aboriginal Research Yahoo! site (http://ca.groups.yahoo.com/group/Aboriginal_research/).

*Training:*

The AKS program may be designed to include supplementary provisions for training and mentoring of both Aboriginal and non-Aboriginal students interested in developing their research skills within and in relation to Aboriginal knowledge traditions.

*Knowledge mobilization strategies:*

The program must be flexible with regard to knowledge mobilization: ultimately, all Canadians will benefit by preservation and restoration of Indigenous knowledge, but there are many ways in which Aboriginal nations and communities first need to situate themselves in relation to this knowledge – and then bring that knowledge to fora that involve interaction with other knowledge traditions. The researchers themselves will have the task of deciding which knowledge mobilization strategies are most appropriate.

*Adjudication:*

It was proposed that all members of the adjudication committee be either accomplished researchers or highly respected knowledge-keepers within Aboriginal traditions and respectful of Aboriginal peoples and Aboriginal knowledge.

A majority of the committee would be Aboriginal researchers drawn from First Nation, Métis and Inuit traditions. The committee would include at least one Aboriginal Elder, drawn in rotation from the First Nation, Métis and Inuit communities.

*Program development:*

Research within the proposed AKS program could form the "cornerstone" for SSHRC's engagement of Aboriginal research: non-Aboriginal people especially need to have an opportunity to understand the ways in which Aboriginal knowledge traditions are distinctive, yet complement non-Aboriginal traditions. Other more-specific research programs could flow from this work. The adjudication committee will advise Council annually on needs met and unmet by the program.

*Program option:*

Some of the objectives of this initiative potentially could be realized within SSHRC's recently revised Research Development Initiatives (RDI) program. Special emphasis may be required on the value of investigating Aboriginal knowledge traditions.

3. Aboriginal Research Careers (ARC) Program

*Proposed training initiative:*

The proposed Aboriginal Research Careers program could be designed to advance the capacity of Aboriginal and non-Aboriginal researchers in Aboriginal research.

*Context:*

The ARC program will respond to the Dialogue recommendation that SSHRC develop a "multifaceted approach to strengthening [the capacity of] Aboriginal researchers" – by providing "undergraduate development, fellowships, scholarships, mentorship, practicums and support to ongoing networking through summer institutes, conferences and workshops."[32]

The main focus of the program is development of research capacity in and through Aboriginal scholars. The ARC program would reflect and acknowledge that individuals with Aboriginal ancestry are, on average,

[32] The synthesis paper prepared by Lynne Davis records this intervention: "In 1998, the Native Studies Department at Trent University initiated a Ph.D. program in Native Studies, the only one of its kind in Canada and one of only two in North America. This program is intended to help prepare a new generation of academics who are grounded in Indigenous scholarship. As the program enters its fourth year, we have sixteen active Ph.D. students, ten of whom are of Indigenous ancestry. Despite the immense potential of these scholars, not one of them is supported by SSHRC. Several have applied for SSHRC doctoral fellowships but have not been successful in these competitions. SSHRC Doctoral scholarships are the most competitive awards at this elite level of study, and we are not sure that the promise and originality of our students is recognized in current structures of financial support" (p. 20). See note 29 above.

facing an array of particular challenges within the Academy – and that these individuals are needed to facilitate the effective development of Aboriginal research.

However, the program will be open to non-Aboriginal scholars as well. It falls to the adjudication committee to assess relative needs and opportunities.

Funding methods could be modeled to some extent on the basis of the Fellowship, conferencing and other programs that already exist at SSHRC, though the proposal is that applications for career-building programs be received from Aboriginal community organizations and Canadian post-secondary institutions working in partnership.

The ARC program may, for example, include consideration of innovative measures –

- to allow Aboriginal faculty members with MAs to obtain their doctorates (e.g., via summer institutes);
- to allow non-academic Aboriginal researchers to augment research credentials; and,
- to increase the interest of young Aboriginal people in social science and humanities research careers.

*Adjudication:*

It was proposed that all members of the adjudication committee be either accomplished researchers or highly respected knowledge-keepers within Aboriginal traditions and respectful of Aboriginal peoples and Aboriginal knowledge.

A majority of the committee would be Aboriginal researchers drawn from First Nation, Métis and Inuit traditions. The committee would include at least one Aboriginal Elder, drawn in rotation from the First Nation, Métis and Inuit communities.

*Future program development:*

As future needs are identified, separate programs may be proposed and created. The ARC program could in many ways be fact-finding in orientation, charged with assessing demand and identifying unrealized opportunities. The adjudication committee would advise Council regularly on needs met and unmet by the program.

*Program options:*

- Some of the objectives of this initiative may potentially be realized within SSHRC's existing fellowship and conference programs. Special emphasis may be needed on the value of developing research talent in Aboriginal research;
- The program could be directed solely at Aboriginal researchers and students;
- The range of program options could be narrowed (Council may wish to focus only on Aboriginal doctoral students as a start[33]);
- Applications could be received from individuals instead of sponsoring organizations.

4. Aboriginal Participation in Peer Committees and External Assessments

*Proposed initiative:*

This initiative proposes to involve Council in ensuring that Aboriginal researchers and experts are involved, as appropriate, in *all* SSHRC peer adjudication committees, and employed for external peer assessments for those committees.

[33] See http://www.pre.ethics.gc.ca

*Context:*

Aboriginal researchers are active in all academic fields. Aboriginal research does not involve only the study of Aboriginal topics.

Broad agreement to involve qualified Aboriginal researchers in committees and external evaluations can be expected. The challenge is in developing effective ways of identifying (e.g., in the SSHRC data bases) which scholars are Aboriginal.

5. Community Protocols Information (CPI)

*Proposed initiative:*

This initiative proposes to involve SSHRC in ensuring, in the context of ongoing efforts to revise Section 6 of the Tri-Council Policy Statement on Ethical Conduct for Research Involving Humans,[34] that a national effort is made to identify, analyze and promote research protocols being established by various Aboriginal communities and organizations.

*Context:*

The Dialogue brought attention to efforts by Aboriginal communities to develop research protocols and ethics review procedures. Such efforts include:

- the "Indigenous Community Research Protocol" developed by the First Nations Aboriginal Counselling Program at Brandon University;
- the research protocols at Akwesasne;
- the "Protocols & Principles For Conducting Research in an Indigenous Context" developed (and currently being revised) by the University of Victoria's Indigenous Governance Programs;
- "Respectful Treatment of Indigenous Knowledge" developed for the Ontario government's Aboriginal Healing and Wellness Strategy;[35]
- the "Mi'kmaq Ethics Watch - Principles and Guidelines for Researchers Conducting Research With and/or Among Mi'kmaq People";
- Kahnawake Schools Diabetes Prevention Project Code of Research Ethics;[36]
- the Ownership, Control, Access and Possession (OCAP) principles;[37] and
- research rules developed by the Alaska Federation of Natives.[38]

Community research protocols appear to be helpful in empowering Aboriginal communities as well as in providing greater certainty for researchers around questions of ownership of information, dissemination, access to various kinds of knowledge, privacy, etc.[39]

The CPI initiative may also provide a useful way of developing practical understandings among researchers and ethics boards on various ethical questions, including those focused on intellectual/cultural property.

*Partners:*

SSHRC would collaborate with the Interagency Advisory Panel on Research Ethics and other appropriate

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[34] See www.cfcs.gov.on.ca/CFCS/en/programs/SCS/AboriginalHealingandWellness/default.htm

[35] See www.ksdpp.org.

[36] See http://www.naho.ca/NAHOwebsite./nsf/rhsFrames.

[37] Work has also been done by academic communities – e.g., the Canadian Archaeological Association's "Statement of Principles for Ethical Conduct Pertaining to Aboriginal Peoples." See also: Association of Canadian Universities for Northern Studies: "Ethical Principles for the Conduct of Research in the North"; Aboriginal Healing Foundation: "Ethics Guidelines for Aboriginal Communities Doing Healing Work" (2002); and First Nation and Inuit Regional Longitudinal Health Survey: Code of Research Ethics (1999).

[38] Within the Dialogue there has been some ambivalence around the need for national ethics guidelines. There has been some sense that the solution may lie in creating effective research protocols at the local level, because such protocols reflect and respect individual differences in protocol among various Aboriginal peoples. For example, the Blackfoot emphasize approval by responsible individuals, not community political representatives; in other Aboriginal communities approvals are given by families who are responsible for various kinds of knowledge. See "Comments on protocol," posting by Ryan Heavy Head to SSHRC's Partnership Listserv on April 16, 2003 – copy available under "Files" on Yahoo! Group site, http://ca.groups.yahoo.com/group/Aboriginal_research/.

[39] See note 29 above.

partners in this effort, perhaps leading off with a joint workshop or small conference on community protocols in areas of research covered by the three federal granting councils. Canadian Heritage and the Canadian Biodiversity Office (Environment Canada) could also be involved given their interest in Aboriginal intellectual property issues.

6. Web-based Network for Aboriginal Research

*Proposed initiative:*

This initiative proposes to involve SSHRC in ensuring continuation of the electronic network created through the Dialogue, adding in features that promote research, knowledge mobilization and assessment of research impacts.

*Context:*

The Dialogue has served to identify the need for a supportive Aboriginal research network – a place to exchange information on research ideas, research resources, training opportunities, employment opportunities, etc..

A Web-based network can also be used to disseminate research results, especially unpublished research or research available only in "gray literature."[40] As well, such a network can be used as a source of ongoing advice for SSHRC on its Aboriginal research initiatives.

*Partners:*

SSHRC may wish to partner on this initiative with such organizations as the Canadian Indigenous and Native Studies Association (CINSA) and/or various Aboriginal universities/colleges or other interested organizations. Moderating the Network could fall to SSHRC's partner, working in close collaboration with SSHRC staff.

7. Representation of Aboriginal peoples within SSHRC

*Proposed initiative:*

This initiative proposes to involve SSHRC in reviewing options for augmenting participation of Aboriginal peoples at all levels of its organization (Board, committees, staff).

*Context:*

SSHRC may wish to examine the Aboriginal Council established by Queen's University[41] and the Aboriginal Peoples Secretariat established by the Canada Council[42] to determine whether and how Aboriginal representation within SSHRC may be organized. Questions that may be asked include: Should a special or formal advisory relationship be established (e.g., an Aboriginal Circle or a special committee on Aboriginal research)? Or should Council simply ensure that Aboriginal individuals are included at all levels of the organization? Moreover, if a SSHRC transformation exercise moves forward, is it be appropriate to explore the idea of establishing an Aboriginal Research Institute similar to CIHR's[43] Institute for Aboriginal Peoples Health (IAPH)?

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[40] The 2002 Action Plan of the Queen's Aboriginal Council can be found at http://www.queensu.ca/secretariat/senate/policies/AborCoun.html. The 1999-2000 Annual Report for the Council is at http://www.queensu.ca/secretariat/senate/0009AppI_Abo.html. See http://www.canadacouncil.ca/grants/aboriginalarts/.

[41] See http://www.canadacouncil.ca/grants/aboriginalarts/.

[42] Canadian Institutes of Health Research

[43] The original paper includes four appendices. For the complete paper, contact Craig.McNaughton@sshrc.ca.

## C. Program management measures

1. Monitoring, assessment and evaluation

Because the above programs are exploratory, they need active monitoring, assessment and evaluation with a view to strategic program re-design and active "harvesting" of the benefits to Aboriginal peoples, researchers and the general public. SSHRC staff may be assigned to interact with the ongoing Web-based network, the adjudication committees, and interested stakeholders to assess in an organized manner how these initiatives are faring. In the context of ongoing work on monitoring, assessment and evaluation, key anticipated program outcomes can be identified as follows:

*Aboriginal Community Research (ACR) Program:*

- The research sponsored by this program, in the view of the applicant communities or community organizations, will have made a demonstrably positive impact in meeting the challenges or realizing the opportunities identified by those communities.

*Aboriginal Knowledge Systems (AKS) Program:*

- Evidence of the value of Aboriginal knowledge systems in their own right and in relation to other knowledge systems will have been generated.

*Aboriginal Research Careers (ARC) Program:*

- The set of funding mechanisms established will have, in both quantitative and qualitative terms, advanced the capacity of Canadian researchers in Aboriginal research.

*Aboriginal Participation in Peer Committees and External Assessments:*

- The number of Aboriginal members involved in SSHRC adjudication and planning committees will have climbed dramatically.

*Community Protocols Information (CPI):*

- The information generated will have been found useful by researchers and Aboriginal communities in establishing effective agreements on intellectual and cultural property, mobilization of research information, etc.

*Web-based Network for Aboriginal Research:*

- The proposed Network will have generated a sizeable number of productive research connections.

*Representation of Aboriginal peoples within SSHRC:*

- Council will have adopted the set of representation measures which in its view obtains the maximum possible engagement of researchers and organizations active in the rapidly evolving area of Aboriginal research.

2. Special program requirements

There may be a need, in the context of the proposed ACR, AKS and ARC programs, to provide simultaneous interpretation in French, English and certain Aboriginal languages. Funds for this can be sought from within the federal government.

Alternatively, more committee time may be needed to allow members to express themselves in their strongest language and to then allow other members or assistants who know the language used to provide summary interpretations.

### D. Ongoing[44]

The Dialogue on Research and Aboriginal Peoples consistently confirmed that a paradigm shift is well underway in the way Aboriginal research is understood. However, the exact nature of that shift remains a matter of ongoing discussion among members of the Dialogue. ▲

[44] Royal Commission on Aboriginal People, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada*, 1996.

# Programs in Profile

## The Aboriginal Justice Strategy

Chris Fleming, Aboriginal Justice Strategy

### Introduction

It has long been established that Aboriginal people have much more contact with the criminal justice system than other groups. Aboriginal people represent 3.3% of the Canadian population, but make up 18% of total provincial and territorial sentenced admissions. The incarceration rates for Aboriginal people are much higher than the rate for non-Aboriginal persons[45]. In 2004, Aboriginal people were more likely than non-Aboriginal people to have come into contact with police as victims of crime (13% compared to 7%), as witnesses to a crime (11% compared to 6%), or by virtue of being arrested (5% compared to 1%).[46]

Researchers have found that much of the overrepresentation of Aboriginal people in the justice system can be traced to socio-economic conditions and historical factors. A demographic bulge in the 15-24 age range for the Aboriginal population can partially account for higher crime rates as this age cohort is more likely to commit property and violent crime. Also, other socio-economic factors, such as lower rates of educational attainment, lower employment and income, and other health and social issues contribute to Aboriginal people's overrepresentation in the justice system and play a part in a continuing cycle of overrepresentation.[47]

In order to combat these trends the federal government has initiated a number of programs across the federal justice continuum. One such program - the Aboriginal Justice Strategy - supports Aboriginal communities to establish programs and systems to divert Aboriginal people away from the mainstream justice system and to handle less serious offences (property crimes for example) outside of courts. This is meant to allow for cultural sensitivities and more victim participation in the resolution of offences and allows the entire community to feel ownership of the process, which is meant to heal the community. There is evidence of success in these programs: recidivism in Aboriginal communities has decreased due to AJS programs and participating Aboriginal people have found it to be a worthwhile process.[48] In addition to this, the AJS has gained eager partners and participants, both provinces and territories, as well as Aboriginal communities.

### The Aboriginal Justice Strategy

The Aboriginal Justice Strategy was created in 1991 (originally called the Aboriginal Justice Initiative), to support a range of community-based justice initiatives such as diversion programs, community participation in the sentencing of offenders, and mediation and arbitration mechanisms for civil disputes. The AJS has undergone a series of renewals and expansions, culminating in the recent 2007 Budget announcement to renew the AJS until 2012.

The AJS focuses on strengthening the capacity of Aboriginal communities to reduce victimization, crime and incarceration rates through increased community involvement in the local administration of justice. This increased capacity will contribute to the development of

[45] Statistics Canada, General Social Survey on Victimization 1999, reported in Aboriginal Peoples in Canada (Ottawa: Canadian Centre for Justice Statistics, 2001).

[46] "Victimization and offending among the Aboriginal population in Canada". Juristat, 2006.

[47] "Recidivism Study," Aboriginal Justice Strategy. Ottawa: Evaluation Division, Department of Justice Canada, 2006.

[48] Recidivism rates are cumulative over time and are adjusted to control for underlying differences in characteristics between the program and comparison groups. The adjustment uses Cox regression fitted to the total sample averages for number of prior convictions (mean = 3.79), age (mean = 28.95), and gender (mean = .61, where 0 is female and 1 is male).

more appropriate responses to Aboriginal over-representation and, over the longer term, reduce the percentage of Aboriginal people coming in contact with the criminal justice system in communities with AJS programs. Furthermore, as more Aboriginal people become involved in justice administration, a greater understanding of Aboriginal needs will evolve and, consequently, contribute to the necessary conditions for sustainable improvements within the mainstream justice system.

The AJS has four objectives:

- over the long term, along with other justice programs, to contribute to a decrease in the rate of victimization, crime and incarceration among Aboriginal people in communities operating AJS programs;
- to assist Aboriginal people to assume greater responsibility for the administration of justice in their communities;
- to provide better and more timely information about community justice programs funded by the AJS; and
- to reflect and include Aboriginal values within the Canadian justice system.

The AJS supports two key activities through grants and contributions, namely community-based justice programs and capacity building initiatives. These activities operate jointly, supporting and complementing one another in meeting the overall objectives of the AJS.

## Community-Based Justice Programs

Community-based activities are at the core of the AJS. Through cost-sharing agreements with provinces and territories, the federal government covers up to 50 percent of contributions made toward Aboriginal community-based justice programs, such as diversion, pre-sentencing options, sentencing circles, family and civil mediation, or other related initiatives.

Community-based justice programs have emerged as an alternative to the mainstream justice system, allowing Aboriginal communities to address some conflicts in accordance with their own values of caring and healing. As indicated by the Royal Commission on Aboriginal Peoples, there can be fundamentally different approaches between Aboriginal and non-Aboriginal people on what constitutes justice and how it can be achieved. Community-based justice programs are seen as a mechanism that allow for different approaches to be expressed institutionally. The value of having Aboriginal offenders participate in community-based justice programs is becoming increasingly recognized. This approach helps to increase a sense of responsibility for one's actions and gives the individual a greater connection to their community.

Over time, both federal and provincial governments have implemented initiatives to improve the ways in which the mainstream justice system responds to Aboriginal offenders. Of particular interest is the amendment to the *Criminal Code* in the sentencing of Aboriginal offenders and its interpretation by the Supreme Court of Canada in the *R. vs. Gladue (*1999) decision which stressed a remedial approach as something judges should weigh in every case, and especially in cases involving an Aboriginal person. This is meant to bridge the disconnect between Aboriginal peoples' unique personal and community background and experiences, and the criminal justice system.

Experience, to date, indicates that community-based justice programs also respond to a variety of needs beyond dealing with criminal offences, such as:

- Resolving family conflicts: In some communities, the ability to offer mediation to deal with family conflicts is a strong incentive to implement community-based justice programs. Family law cases and child welfare issues can also be resolved through these community programs which aim to support families in the community.
- Enforcement of Aboriginal by-laws: For those communities that have not signed self-government agreements, community-based justice programs can still be implemented to enforce by-laws, which deal with matters other than criminal offences.

- Crime prevention: The rationale for implementing community-based justice programs also includes the need to offer help to individuals at risk who have not yet committed a formal offence. In these cases, community-based justice programs largely act as preventive measures.

Close to 80% of community-based justice programs funded through AJS are diversion or alternative measures programs. A number of communities also offer a mix of models that may include diversion or alternative measures.

Victims often benefit from their involvement with AJS programs because they are given a voice in the process through things such as healing circles and community sentencing. In cases where victims have a role in the program, they are provided with an opportunity to face their offenders and for offenders to understand the impact of their actions. This is especially important for those cases where the victims and offenders live in small or isolated communities. Victims are also provided with a means of better understanding the offenders, the offenders' background, and the circumstances that led to the offence.

AJS community-based programs have a number of benefits on the communities they serve as well as diverting offenders from the mainstream justice system which include:

- Helping to re-establish connections between the offenders, the victims, and the community;
- Opening up communication and providing a forum for dialogue between people affected by either an offence or another issue brought to one of the programs, a forum which would not generally be available through the mainstream justice system; and
- Playing a role in building stronger communities through a healing process.

In many of the cases examined, regardless of the AJS program model used, the impacts of the program extend beyond the principal participants. The programs help community members have a say about justice in their community by involving them in the process. By sharing their own experiences in a circle, other people involved in the resolution of an offence, such as justice committee members, family members, and Elders, are also provided with a means of healing.

## National Reach

AJS-funded programs are located in every province and territory with approximately 111 alternative measures programs serving about 400 communities. With the enhanced funding for the AJS announced in the 2007 Budget, this number will increase, particularly in the target areas of urban communities, northern regions, and programs that target youth.

Despite this progress, however, community-based justice programs are still only reaching a small portion of Aboriginal offenders. Many Aboriginal communities have yet to implement these programs, and even where such programs exist, not all Aboriginal offenders who may benefit from these programs are able to access them. Crime statistics provide an incomplete, yet, helpful illustration of this important gap in program reach. In 2004-05, AJS programs accepted approximately 7,400 clients. Of this total, approximately 4,500 clients were accepted for non-violent *Criminal Code* offences. During the same year (2004), a total of 28,600 individuals were charged in Canada for offences committed on-reserve including 17,126 individuals charged with non-violent offences, which are the type of offences that are typically referred to the community-based justice programs. However, because of the enhanced and expanded funding the AJS received in the 2007 budget, community based programs will reach more Aboriginal communities in the very near future.

## Capacity Building

Capacity building components are available to communities that do not yet have community-based programs or communities that run such programs. This component offers support for training activities to address the developmental needs of communities, support the development of new programs, or to support one-time or annual events that build bridges, trust and partnerships between

the mainstream justice system and Aboriginal communities. The AJS may cover up to 100 percent of the activities under this component.

Aboriginal communities face a range of challenges in the implementation of their community-based justice programs, including the high level of turnover among the community program staff and mainstream justice personnel (prosecutors, police offices) who refer Aboriginal offenders. Capacity building activities are intended to create awareness of the program at the community level, ensure that program coordinators have the information and skills to effectively do their work, and that key partners in the main stream justice system understand and support the model.

## AJS Results

Evaluations of the AJS have proven its effectiveness thus far. A 2006 *Recidivism Study* found that community based justice programs are very effective at dealing with Aboriginal over-representation within the justice system and that program participants were less likely to re-offend than those that went through the mainstream justice system. Similarly, the 2007 *Summative Evaluation* found that the AJS was creating safer and more stable communities while also being a cost effective alternative to the mainstream justice system. Details of the findings of these studies follow.

## Recidivism Study

As noted above, the Department of Justice recently conducted a study to assess the impact of five AJS programs on recidivism (i.e., re-offending). The study compared the likelihood of re-offending of individuals who participated in an AJS program with that of individuals who were referred to, but did not participate in, an AJS program. This study provides insights into the impact of AJS programs on clients' likelihood of re-offending over time.

Although there were many reasons why offenders would be referred to an AJS program but did not participate in that program, the two most common reasons for non-participation were (a) refusal by the Crown, the program, the victim or the offender, or, (b) the offender had moved away prior to program commencement.

Within the study, offenders who participated in an AJS program are referred to throughout this summary as "program participants." Offenders who did not participate in an AJS program are referred to as "comparison group members." Criminal behaviour is defined in terms of criminal offences that result in convictions (or findings of guilt in the case of young offenders). In total 3,361 AJS program participants and 885 comparison group members from nine programs across Canada were part of this study.

The background characteristics of offenders in the total sample were as follows:

- the majority were male (60.67%)
- their average age was just under 29 years old;
- only a small portion (8.78%) were youth under the age of 18;
- most had never been convicted of a crime prior to their referral to the AJS program(60.67%); and
- most were referred to the AJS program for non-violent crimes (72.52%).

Program participants and comparison group members tended to be similar in background characteristics but some key differences between the two groups were identified: comparison group members tended to have more prior convictions, to have been more recently referred to an AJS program, and to be slightly older.

The results from the study lend strong support to the assertion that AJS program participation reduces the likelihood of recidivism. Though more pronounced in the years immediately following program completion, the discrepancy in recidivism scores between program participants and comparison group members continues at every point in time after program completion. Table 1 shows the estimated recidivism rates for program partic-

ipants and the comparison group at various points in time after participation in the program[49].

| Table 1: AJS Average Recidivism Rates | | |
|---|---|---|
| Time After Program Completion | Cumulative Percent Who Have Re-Offended | |
| | Participants | Comparison Group |
| 6 months | 6.12 | 12.64 |
| 1 year | 10.85 | 21.77 |
| 2 years | 17.57 | 33.84 |
| 3 years | 22.32 | 41.72 |
| 4 years | 26.73 | 48.57 |
| 5 years | 29.86 | 53.16 |
| 6 years | 31.25 | 55.11 |
| 7 years | 32.20 | 57.41 |
| 8 years | 32.24 | 59.18 |

As the table shows, recidivism rates are significantly lower among program participants at every point in time after completing the program. In terms of the extent of the impact, AJS program participants are approximately half as likely to re-offend as are comparison group members.

## Case Studies

In 2006, the Department of Justice's Evaluation Division conducted case studies with 10 communities that have established community-based justice programs through AJS funding and that volunteered to participate in this process. The selected case studies include a diverse mixture of programs that serve different types of communities (including Inuit, First Nations, Métis, and on- and off-reserve communities). As part of these studies, documents from each of the selected communities were reviewed and five individuals from each of the case study programs were interviewed, including justice coordinators, police officers, victims, offenders, justice committee members, city officials, Elders, prosecutors, probation officers, and defence counsel. A total of 63 individuals were interviewed.

As a part of the case studies, the Department of Justice utilized an innovative participatory method called Photovoice, where program participants from the case study communities took pictures to represent their experiences with community based justice. With this approach, the participants record and reflect on issues that are important to them. Photovoice is based on the premise that community members are the most knowledgeable about the situation in their respective communities and about solutions that work.

Photovoice participants received some training and were instructed to take pictures related to three themes:

- What does justice mean to you and your community?
- What are the strengths, challenges, and concerns your community has in dealing with justice issues?
- What impact has the community-based justice program had in your community?

Photovoice participants later met to tell the stories of their pictures, which were documented through narrative note taking and digital recording, when possible.

Initially program coordinators expressed some mistrust of conventional evaluation approaches. Participants, however, were open to the photovoice process and the combination of stories and photos helped to illustrate the impacts that AJS programs are having within the communities. As intended, Photovoice enabled the evaluators to perceive the world from the viewpoint of the community members—those who are most involved and impacted by the community-based justice programs. In addition, the information was shared with participants in an open manner and communities felt more ownership over the results.

[49] The Tripartite Working Group (TWG) is an FPT Working Group that reports to Federal-Provincial-Territorial Deputy Ministers Responsible for Justice. The TWG is composed of representatives from the Department of Justice, a representative from each province and territory (except New Brunswick and PEI) and a representative from the service delivery agency in each jurisdiction.

## Lessons Learned

The AJS evaluation identified a number of key elements that contributed to successful Aboriginal community based justice programs. For instance, the role of the program coordinator was found to be pivotal to the success of the program, and skilled program staff and volunteers equally so. Quality training for program staff was identified to be extremely important to the success of a program as was corporate memory for such things as best practices. It was found that the turnover rates for program coordinators were rather high, and because of this, a process for continuity from one coordinator to another is necessary.

It was also found that programs would be more successful if there was ownership of the program demonstrated by the community. If the culture and traditions of the people the program was helping were included in the justice process, the better chance the program would succeed.

The participation of other elements of the justice system was also identified to be critical to the success of the AJS. If judges, police, or prosecutors are unwilling to refer offenders to community programs, there is very little a program can do. A key objective of the AJS is to promote the use of alternative measures to the mainstream justice system to address Aboriginal justice issues.

## Cost Comparison between the Mainstream Justice System and an AJS Program

Since every AJS program is unique, it is challenging to establish an average cost per referral. Recognizing that, the AJS Summative Evaluation reviewed activity reports and the financial information of nine AJS programs. They included contributions from both the federal and provincial governments, and, in most cases, considered two recent fiscal years of activities and expenditures. When dividing total program expenditures by the total number of referrals, the average cost per referral was $973.

Turning to the mainstream justice system, the estimated cost of processing a summary offence case through the court system was found by the same evaluation to be approximately $859 per charge. This average cost is based on provincial court expenditures (court expenditures, prosecution costs, and legal aid) from three jurisdictions in Canada relating to summary offence charges. This provincial average does not reflect the cost of conducting a trial in a remote location, which is considerably higher.

Even without including the higher costs of holding a trial in a remote location, the AJS was still found to be a more cost-effective approach in dealing with offenders than sending them into the mainstream justice system. While the cost per unit for an AJS referral is higher than the cost per charge in the mainstream justice system, the considerably lower recidivism rate among AJS participants means that, over time, the justice system would be achieving savings.

## Conclusion

It has been well documented that the mainstream justice system has historically not responded well to Aboriginal peoples, as evidenced by their disproportionably high victimization and incarceration rates. AJS programs are designed to tailor justice needs to specific Aboriginal communities to address this overrepresentation. By taking cultural factors into consideration when dealing with criminality and by focussing on healing the community and offender rather than punishment, the justice process is seen as more relevant and responsive to Aboriginal communities' needs.

Furthermore, in a targeted examination, the AJS has proven to be effective in combating recidivism, more so than the mainstream justice system, and has been a very positive experience for the communities that host these programs. And in an environment of increasing pressure to show value for spending, AJS programs have been shown to be more cost-effective than the mainstream justice system. ▲

# Aboriginal Courtwork Program

Stephanie Dulude, Policy Planning Directorate

The Aboriginal Courtwork Program is an ongoing justice program cost-shared with provincial and territorial governments through contribution agreements. The Aboriginal Courtwork Program seeks to ensure that Aboriginal people charged with criminal offences receive fair, equitable, and culturally sensitive treatment by the criminal justice system. All Aboriginal (First Nation, Inuit or Métis) people in conflict with the law are eligible for Courtworker services regardless of status, age or residency.

## History of the Aboriginal Courtwork Program

The Aboriginal Courtwork (ACW) Program began as a community- initiated program in the early 1960s to address the unique justice challenges of Aboriginal people. Several studies had revealed the particular challenges faced by Aboriginal persons charged with criminal offences: a sense of alienation from the administration of justice in Canada, a feeling of futility, and a very limited knowledge of their rights and obligations, of court procedures and of the resources available to them. The Aboriginal Courtwork Program was implemented to address these issues and to ensure that Aboriginal people were not just pleading guilty to get out of the process, without understanding the consequences of their decision. Additionally, justice system officials often failed to understand Aboriginal culture, tradition, language and issues.

Federal financial support began in 1969 and by 1978 the ACW Program became an ongoing program cost-shared between the federal and provincial/ territorial governments. In 1987; the program began providing services to Aboriginal youth

## How Aboriginal Courtwork Services are Delivered

The ACW program is provided through the collaboration of service delivery agencies, provinces and territories, the federal Department of Justice and the Tripartite Working Group.[50] The Aboriginal Courtwork Program currently operates in eight provinces (all but P.E.I. and New Brunswick) and in all three territories. Service delivery agencies provide direct services to the Aboriginal accused through contracts with provincial and territorial governments. In all but three jurisdictions, service delivery agencies are Aboriginal organizations that are accountable to their communities and, where applicable, to their boards of directors and Aboriginal government organizations.

## What Aboriginal Courtworkers Do:

Aboriginal Courtworkers work within the mainstream justice system to increase access to justice by ensuring Aboriginal people charged with an offence receive timely, accurate information throughout the court process, provide referrals to appropriate legal, community justice and social programs and facilitate communication between the accused and criminal justice officials.

This is achieved through providing information to any Aboriginal person (adult or youth) charged with an offence at the earliest stage and throughout the criminal justice process on:

- the nature and consequence of the charge(s);
- their rights, responsibilities and options under the law (but not legal counsel), including alternative justice processes if available; and

[50] In 2004, over half (55%) of on-reserve *Criminal Code* incidents were classified as "other" *Criminal Code*, Vol,26, no. 3, 2006., Ottawa: Statistics Canada

- the various plea options to the accused and to inform them of the consequences of each option in order for them to make an informed decision about how to proceed.
- the legal, social, medical and other resources available in their community to enable them to address the underlying problems that may contribute to their charges.

Post-sentencing, they provide information on the disposition or direction given them by the court or community.

Aboriginal Courtworkers also provide information and advice to new alternative/community justice programs;

- assisting criminal justice personnel to become familiar with non-custodial sentencing options;
- building community capacity to identify and address problems;
- supporting alternative/community justice programs by taking on a "gateway" function to refer clients to the program as appropriate, and participating to a limited extent where no conflict of interest exists; and,

Serving as a "bridge" between criminal justice officials and Aboriginal people and communities to help overcome communication barriers, Aboriginal Courtworkers:

- Maintain communications and collaboration with criminal justice personnel at all stages, and helping the accused speak for him/herself before the court and with various justice system personnel.
- Provide appropriate information to the court; and
- Inform justice officials about the cultural traditions, values, languages, socio-economic conditions, and other concerns of the Aboriginal community and the perspective of Aboriginal accused. In particular, this includes providing counsel and the judiciary with information on systemic, community, family and other background factors as well as particular circumstances affecting the accused, prior to a sentencing decision. It can also include contributing to pre-disposition/pre-sentence reports.

## Evolving Role of Aboriginal Courtworkers

In 2005-2006 Aboriginal Courtworkers served over 60,000 clients who had charges and were going through the criminal justice process. The Aboriginal Courtwork Program through experience and ongoing innovation is able to provide a wide range of services to the "Aboriginal Accused" for a federal investment of less than $100 per client. According to 2005-2006 performance measurement data, Administration of Justice Offences is overwhelmingly the largest category of offences for which Aboriginal Courtworkers provide services. This illustrates the importance and efficiency of the Program in its capacity of providing comprehensive and timely information. [51]

The impact of *R. v. Gladue* and other sentencing principles in s. 718.2 of the *Criminal Code of Canada* is significant for Aboriginal Courtworkers who are routinely being asked to provide information about their clients to the courts upon sentencing.

Aboriginal Courtworkers play a different role in urban centers compared to rural centers. In some communities court workers are the only resource available for those with summary charges. In some smaller remote communities the Aboriginal Courtworker is the only community contact the Aboriginal accused has to the criminal justice system.

Because Aboriginal Courtworkers are uniquely placed in the justice system and in their communities, they are becoming increasingly involved in community-based approaches and in working with service partners to address the needs of their clients. A well resourced Aboriginal Courtwork Program is uniquely positioned to provide the necessary information to both the accused and the criminal justice system to increase access, efficiency and understanding. ▲

[51] In 2004, over half (55%) of on-reserve Criminal Code incidents were classified as "other" Criminal Code offences, such as mischief and disturbing the peace (Jodi-Anne Brzozowski, Andrea Taylor Butts and Sara Johnson, "Victimization and offending among the Aboriginal population in Canada," Juristat, Vol,26, no. 3, 2006., Ottawa: Statistics Canada

# JustPreview

The following is a preview of reports that will be featured in the next issue of *JustResearch*.

**An Outcome Analysis of Drug Production Cases in Canada, 1998-2003**

Kuan Li, Senior Research Officer
Kimberly Burnett, Research Assistant
André Solecki, Research Assistant

This study will examine how accused demographics, production site characteristics and criminal history relate to case outcome, disposition, and offender recidivism in Canadian drug production cases.

**Drug Importers in Ontario**

Nicole Crutcher, Senior Research Officer

Two criminal cases (R v. Hamilton and Mason) demonstrated that very little is known about the nature of offenders who commit drug offences, or factors that are related to the importation of illicit substances. This study will provide an analysis of offender and characteristics, and examine case outcome and recidivism of offenders charged with importing in Ontario.

**Perceptions of Risk: An Examination of Federal Drug Offenders in Ontario**

Nicole Crutcher, Senior Research Officer

Importing drugs is a unique offence inasmuch as it requires a degree of planning and premeditation. Very little is known about the offenders who commit serious drug offences as represented by federal prison sentences (2 years or more). Through interviews with inmates this study examines the risk perceptions drug offenders in Ontario had prior to committing their offence. In addition, the study also will speak to federal offenders' involvement in organized crime. Finally, given concerns over sentence length and deterrence, their knowledge of sentencing will also be examined.

**Prevalence of Drug Impaired Driving In Canada, 2000 - 2004**

Sherilyn Palmer, Senior Research Officer
Paul Boase, Transport Canada

In Canada, information on fatally injured impaired drivers has been collected for over 30 years. These data have been useful in monitoring alcohol-impaired driving. In order to track the incidence of drug-impaired driving, the Strategy to Reduce Impaired Driving (STRID) fatality database, collected by the Traffic Injury Research Foundation on behalf of Transport Canada and the Canadian Council of Motor Transport Administrators was modified to collect drug-impaired driving-related information.

To date, the mechanism by which various drugs might contribute to vehicle crashes is not well understood. The aim of this study is to elucidate the current situation of drug-impaired driving in Canada. This research will speak to the magnitude of drug-impaired driving at the both the national and regional levels. A unique feature of this study is that it will contain quantitative information on the presence of drugs on fatally injured drivers. The results of this study will provide information on positive testing rates for drugs among fatally injured drivers in Canada. Results will be based upon 9,158 fatally injured drivers and will examine rates by type of substance as well as by region within Canada. ▲