Aboriginal Justice Inquiry

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METIS PEOPLE AND THE JUSTICE SYSTEM

Final Report

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PART I

SUMMARY AND RECOMMENDATIONS

SUMMARY AND RECOMMENDATIONS

Objects of this Project

The intent of the Inquiry in proposing this particular project is to "analyze those justice system issues that impact upon the Métis in a manner that is sensitive to the perspective of the Métis people of Manitoba." Further, the intent is to generate recommendations for reform of "aspects of the justice system that impact most significantly upon Métis people in a way that is responsive to their current needs and future aspirations." In particular, the Inquiry indicated its interest in the following matters:

- the child welfare system, family violence and the possible need for a Métis or urban Aboriginal service,
- the development of community based alternatives to incarceration and to the courts,
- the applicability of the Indian policing model,
- delivery of legal services.

Definitions

1. "Justice system", and related terms: In accordance with the object of conveying the Métis perspective, the general term "the system", or, "the criminal law system", or the "family services system" will be used. "The system" comprises both the "justice system" (the State apparatus concerned with the

administration of the criminal law) and the "child welfare system", unless the context indicates otherwise. The Métis perspective (and, indeed, the perspective of many non-Métis) is that the criminal law system is properly characterized as a system of social control rather than as a system the primary aim of which is to do "justice". The popular term "Child and Family Services" is rejected because it fails to connote the Métis perspective that the child is inherently a part of the family. The term "child welfare system" will be used where reference is made to services directed at children by existing non-Aboriginal institutions.

2. Métis: The term will reflect current usage and include all Aboriginal persons who are not included within the federal Parliament's legislative scheme enacted pursuant to its constitutional powers to legislate in respect of "Indians, and Lands reserved for the Indians". (Mainly the Indian Act, R.S.C. 1985 c. I-6, and the regulations made pursuant to the Act) This adoption is not intended to reflect any opinion respecting the legal identification of the people who fall within the constitutional category. The Métis people are more fully described in Part III.

Methods and Limits of the Research Project

The project analyzed the issues identified by the submissions

to the Inquiry as being of significant impact upon Métis people.[1] Further, interviews were conducted with individuals, in order to develop "the Métis perspective". Twenty-seven persons were interviewed and asked to describe their views of the matters that appeared to them to be significant in light of the objects of this research project. In appropriate cases, they were asked to respond specifically to the issues identified by the Inquiry as being of particular interest to it. A complete summary and analysis of the views expressed in the interviews, and a description of the interview process, appears in Chapter IV. The analysis was based on the views extracted in the above manner and on the available literature.[2] The analytical approach is considered in the next part.

Analysis and Recommendations

Useful recommendations ought to be based upon agreed facts and upon agreed objects, or principles, for change.

The fact that the existing system is failing the Métis people in light of its own formal objects does not appear to warrant much debate. That injustice appears to be grounded in an inequality in respect of the impact that the system exerts upon Métis people and other Aboriginal people as compared to non-Aboriginal citizens in Manitoba. Happily, the province has provided its own formal

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[1]Not all transcripts have been available to the researcher, therefore the analysis is based upon the materials made available. See Appendix II for a list describing the materials referred to.

[2]The literature review appears as Part II of this report.

recognition of the existence of the relevant inequality:

> Whereas it is difficult, if not impossible, to assure equality before the law for Native people in our criminal courts when so many Native people do not understand the nature of the charges against them, the implications of a plea, the basic court procedures and legal terminology, or their right to speak on their own behalf or to request legal counsel, ...[1]

The agreed principles for change can be found in the following sources:

(a) The acceptance by the governments of Canada and Manitoba that change is required in order to better the circumstances of the Métis of Manitoba. There is no consensus between the government parties and the M.M.F., or any of them, respecting the specific nature of the changes. Canada and the province have, however, discussed the principle of "self-government" for Métis people at conferences aimed at constitutional change, and more recently, the three parties have agreed to discuss the establishment of institutions designed to give the Metis of Manitoba more control over matters that directly affect them.

b. The adoption of a theory of society which attributes the inequality between the impact of the system upon Métis and

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[1]Agreement between Manitoba and Canada, dated September 16, 1977, in Appendix B of "The Manitoba Court Communicator Program -- A Review", by T. Lajeunesse, Research, Planning and Evaluation, Manitoba Attorney-General, February 1987.

other Aboriginal people, on the one hand, and non-Aboriginal people, on the other hand, to fundamental structural differences within society. The inequality is part of an inherently unequal society, wherein power is distributed unevenly. The basic argument is that,

> the deep structure of law is so connected to the protection of property and contract, serving the purpose of the dominant power structures, that, unless we think of completely novel procedures and values, there is no chance for law to equip itself with tools for an independent life apart from the State and class interest.[1]

Analysts have identified two other approaches to explain the over-involvement in the system.[2]

(1) The focus is upon the individual offender. If it is concluded that Aboriginal people simply commit more crimes, the solution is to address the corrective action against the individual offender.

(2) The involvement is related to the system itself: it designates Aboriginal peoples as offenders disproportionately.

The approach adopted in this work has the merit that it accords better with the recognition of the inherent

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[1]J.P. Smith and David N. Weisstub, The Western Idea of Law, (Toronto: Butterworth's, 1983) at p. 468.

[2]See Carol Laprairie, "Native Juveniles in Court: Some Preliminary Observations" quoted in Legal Aid's submission to the Inquiry, by R.G. Klassen, Winnipeg, March 14, 1989, p. 11; Thomas Fleming and L.A. Visano, Deviant Designations: Crime, Law and Deviance in Canada, (Toronto: Butterworth's, 1983), p. 337 ff.

inequality referred to in the Manitoba-Canada agreement.

(c) The constitutional requirement governing state action vis-à-vis the rights of individuals and groups in section 15 of the Charter of Rights and Freedoms:

> 15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
> (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

On the basis of these principles; and in accordance with the discussion which follows, the following recommendations are made:

Recommendation One:

The government of Manitoba should enter into discussions with the Manitoba Métis Federation (M.M.F.) for the purpose of reaching agreement respecting the nature of the future relations between the Métis as a people and the province. Because of the federal union, Canada will have to be a party to these discussions.

Discussion of Recommendation One

The M.M.F. is the political representative of the Métis of Manitoba. It has formally declared the rights of the Métis as a people.[1] These include a right to determine an appropriate place within Canada for the existence and group benefit of the Métis people. The M.M.F. argues that because of the failure of governments to implement section 31 of the Manitoba Act, 1870 (the lands provision) in accord with its true intent, and because the Act of 1870 was accepted by the provisional government as the basis for joining Confederation, the Constitution of Canada is illegitimate vis-a-vis the descendants of the Manitoba Metis to whom the promises respecting section 31 were made. In its official position paper on the matter, the M.M.F. has also referred to Canada's breach of a promise of an amnesty in respect of the well-known events of 1869-70,[2] and to Canada's and Manitoba's implication in the frauds and abuses which accompanied the dispossession of the Metis of their lands in the early years following the entry into Confederation.[3] If the constitution of Manitoba was imposed upon the Métis by deceitful actions then it cannot form the basis of a legitimate agreement of Métis citizens to be

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[1]See Manitoba Metis Federation, "The Rights of the Metis People", M.M.F., October 1987, included as Appendix II, with the kind permission of the M.M.F.

[2]Ibid. For a consideration of the question of an amnesty, see, e.g. Canada, Report of the Select Committee on the Causes of the Difficulties in the North-West Territory in 1869-70, at p. 83, 85, testimony of N.J. Ritchot; App. No. 5. The position of the M.M.F. is further considered in Chapter III, Part C, infra.

[3]M.M.F., "The Rights of the Metis People", Appendix III.

governed by its rules. The criminal law and family services systems are part of this illegitimate State apparatus. New Métis/State relations must be forged.

Further, some of the issues identified by the Inquiry as being of particular interest, and other issues identified by Metis people in the interviews and in the transcripts, raise questions which can only be resolved by the making of political choices. In other words, because of the political implications of these issues, they can not be resolved solely on the basis of arguments based on such factors as economics, legal structure, or morality. The specific issues and suggested options are considered in Chapter IV.

Recommendation Two:

An inquiry should be made concerning the relevance of section 15 of the Charter of Rights and Freedoms to the inequality with which the criminal law and family services systems (which are administered pursuant to the authority of law) impact upon the Metis people.

Discussion of Recommendation Two:[1]

It appears beyond dispute, particularly in light of the submissions made to the Inquiry and in light of the admissions

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[1]For a discussion of S.15 and Aboriginal peoples, see e.g. Michael Mandel, The Charter of Rights and the Legalization of Politics in Canada, (Toronto: Wall & Thompson, 1989).

of governments referred to earlier,[1] that Métis people in Manitoba are not placed in a position of equality in respect of their involvement with the "system". If these are social facts, then the legal issue concerns the meaning of section 15 in relation to these facts. Section 15, as a provision of the Constitution, appears to prescribe action on the part of governments, in addition to its proscriptions. Quite apart from what the Métis as a people might desire in establishing their relations with the State, the State itself has a constitutional obligation to deal with the unequal impact of the "system" upon the Metis. A right conferred by law would be illusory if the State were not obliged to respect it.[2]

Quare, whether in Canadian law the right to the equal benefit of the law in section 15(1) imposes an obligation on both federal and provincial legislatures to act for the benefit of the protection of the prescribed equality, depending upon whether the substance of the problem of inequality in any given fact situation belongs to the constitutional competence of Parliament or the Legislature.[3] In Hunter v. Southam[4] the

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[1]Supra, page 4.

[2]Montréal v. Macdonald, [1986] 1 S.C.R. 460, at 514; 27 D.L.R. (4th) 321 at 362; 67 N.R.1 at 65, per Wilson, J., dissenting.

[3]This position is asserted by Deschênes, C.J.S.C. (Que. Sup. Ct.) in Protestant School Board of Montréal v. Minister of Education (1978), 83 D.L.R. (3d) 645, at 674, and also in Nissan Auto Co. v. Pelletier (1978), 77 D.L.R. (3rd) 646, at 664.

[4]Hunter v. Southam, [1984] 2 S.C.R. 145, at 169, sub. nom. Dir. of Investigations and Research, Combines Investigation Branch v. Southam (1984), 41 C.R. (3d) 97 at 121; (1984), 11 D.L.R. (4th)

Supreme Court of Canada stated that it is the Legislature's responsibility to enact legislation that embodies appropriate safeguards to comply with the Constitution's requirements. If the "law" in section 15 includes all actions taken pursuant to the authority of law, then the mandate of section 15 is cast very widely upon the actions of the bureaucracies in the "system".[1] In the Canadian system, the government is expected to act in accordance with the law. The Constitution requires it to do so. In order to fulfil the obligation to act in accordance with the law, the government is required to find what the law both prescribes and proscribes in respect of its activity and the rights of citizens.

The recommendation to inquire into the legal implications of section 15 is based on the view that a thorough review of the basic institutions by which the systems are administered is needed if the Metis perspective of justice is to be reached.

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641 at 659; [1984] 6 W.W.R. 577 at 597.

[1]See, e.g., on the question of judicial review of executive action, Operation Dismantle v. R., [1985] 1 S.C.R. 441; J.R. Mallory, "Beyond Manner and Form": Reading Between the Lines in Operation Dismantle Inc. v. R.", (1986) 31 McGill Law Journal, 480. An appropriate inquiry into the relevance of section 15 would require an analysis of the relationship of that section to other relevant provisions of the Charter and the Constitution. Without attempting to delimit the scope of an appropriate inquiry further than the terms of the above recommendation, it would appear that sections 25 and 27 of the Charter, at least, would be relevant. For example, does section 27 support the construction that section 15 requires government action to preserve and enhance the cultural heritage of the Metis people, which includes the "aboriginal and treaty rights" recognized and affirmed by section 35 of the Constitution Act, 1982?

Interim Measures

There is a general caution respecting the assumption that the province is the appropriate entity to implement change towards providing justice for the Métis within the system. The Métis live in parts of Canada and the United States as identifiable groups. In Canada, they reside in a number of provinces. One reason for the suggestion that all provincial government measures be put to the M.M.F. for consideration is the recognition that, as a national body, the interprovincial and international group of Métis may wish to press for uniform, national measures in some areas.

Given the basic inequalities in the system, it is not expected that much systemic change can be effected in the short run. In light of the urgency for betterment, however, a number of measures appear to present particular appeal and could form the subject of early discussion between governments and the Métis. These interim measures are considered in Part IV.

PART II

LITERATURE REVIEW

LITERATURE REVIEW

The literature pertaining to the impact of the administration of justice on the Métis people is virtually non-existent. With few exceptions such as Chartier's work, In the Best Interest of the Métis Child, and the Métis and Non-Status Indian Crime and Justice Commission Report, little has been written on the particular involvement of the Métis with the administration of justice in Canada.

Statistics are equally rare in published materials. Two exceptions to this are the Manitoba Metis Federation Survey of Members[1] and John Hylton's article "Locking up Indians in Saskatchewan: Some Recent Findings".[2]

The MMF survey questioned 1011 members of the MMF, interviewing the head of the household on a diverse range of topics. What is presented here is a summary of some of the more germane findings. Overall, these facts give an indication of the disparity that exists between the Metis in Manitoba and the average Manitoban.

The survey paints a reasonably grim picture of economic

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[1]Manitoba Metis Federation, Manitoba Metis Federation Survey of Members, (Winnipeg: University of Manitoba Research Ltd., 1988).

[2]Hylton, J.H. "Locking up Natives in Saskatchewan: Some Recent Findings" in Fleming and Visano, (ed.). Deviant Designations: Crime, Law and Deviance in Canada: (Toronto: Butterworths, 1983), p. 62.

indicators for the Metis. It is claimed that,

> sixty percent of the respondents indicate that they are currently employed full time (38%), part time (8%) or seasonally (14%). Thirty-eight percent of respondents indicate that they are currently looking for work. All respondents indicated that they had been unemployed for a certain period of time in the last two years.[1]

The statistics for income portray a similar situation. Metis people appear to be significantly behind the averages for the province. As the survey found,

> Over 50% of the Metis fall into the lowest income category, compared to 40% of all Manitobans. Less than 20% of respondents are in the highest income category, while almost a third of Manitobans fall in this group.[2]

The survey documents a considerable usage of social services as well as a general feeling that these services play an important role in the community. For example, the survey suggests that,

> Over half of the respondents indicated they knew of someone who has used such a service in the last year. Almost half (44%) responded that they knew someone who had used drug and alcohol counselling services. ...
> All the services are seen as very or somewhat important by about three-quarters of respondents. Both drug and alcohol counselling and child welfare services are important to almost 90% of the respondents.[3]

The Hylton article is a rare source of discrete Metis statistics on criminality and incarceration. Hylton documents

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[1]MMF, op. cit., p. 12.

[2]MMF, op. cit., p. 21.

[3]MMF, op. cit., p.22.

the fact that while Metis in Saskatchewan are less likely to be involved with the law than Status Indians, their rate of involvement is considerably higher than that of the non-Natives. He writes:

> ... in comparison to male non-Natives, non-Status Indians or Metis were 8 times more likely to be admitted to a provincial correctional centre. If only the population eligible over 15 years of age is considered, that is, the population eligible to be admitted...male non-Status Indians were 12 times more likely to be admitted.[1]

Examining the statistics from another perspective, Hylton finds that,

> A male Treaty Indian turning sixteen in 1976 had a 70 percent chance of at least one incarceration in a provincial correctional centre by the age of twenty-five. The corresponding figure for a male non-Status Indian or Metis was 34 percent, while for a non-Native male the figure was 8 percent.[2]

The alternative measure taken by the literature has been to consider the Métis together with other Aboriginal groups under a single rubric, such as Native or indigenous peoples. The various ramifications of the justice system are then examined as they impact on this larger population. Frequently, comparisons are made between the "Native" and "Non-Native" segments of the body politic.

An attempt to review the literature which deals specifically

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[1]Hylton, J.H. "Locking up Natives in Saskatchewan: Some Recent Findings" in Fleming and Visano, (ed.) Deviant Designations: Crime, Law and Deviance in Canada. (Toronto: Butterworths, 1983), p. 62.

[2]Hylton, ibid., p. 65.

with the Métis experience would be a short and rather futile gesture. This does not mean, however, that there is not a great deal of utility to be derived from performing such a review. A review of the literature that exists makes it apparent that the majority of problems and concerns facing the Métis are similar, if not identical, to those experienced by the more inclusive Native category employed by the majority of authors.

In light of these common phenomena and shared systemic inadequacies, the following will be a brief examination of some of the more prevalent concerns identified in the literature as arising from the impact of the administration of justice on the Native community in Canada. The categories utilized are an attempt to follow those created by the Inquiry itself.

Policing

Aboriginal people are vastly overrepresented in their contact with the police. Roberts and Skoog state,

> The response patterns of the two groups indicated that while nineteen per cent of the whites had been contacted by the police in the preceding twelve months, thirty-four per cent of the natives had the same experience.[1]

Moreover, Roberts and Skoog found that Aboriginal people were much more likely to be stopped for what were perceived as "vague inquiries" than Whites.[2] This finding is supported by

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[1]Roberts, L.W. and D. Skoog Native People and the Police: A Description and Discussion (Winnipeg: Dept. of Sociology, University of Manitoba, Unpublished Paper, n.d.) p. 10.

testimony given before the Inquiry. It is not surprising, then, that Aboriginal people have also been found to have attitudes towards the police that can be "characterized by hostility and distrust".[1] Griffith and Yerbury argue that,

> In sum, investigations conducted on native-police relations in both rural and urban jurisdictions suggest that police officers often have stereotypical views of natives, a limited understanding of native life styles and culture, and operate under organizational policies and practices that hinder the development of non-law enforcement relationships with native communities. Corresponding to these attributes of police officers is the general lack of knowledge among many natives about the criminal justice system, the role of policing within it, and of their legal rights as Canadian citizens.[2]

Depew suggests that Aboriginal people are,

> ... subject to the extremes of over-policing and under-policing which can lead to disproportionate levels of native arrests and charges, and under-utilization of police services.[3]

Depew examines two different models of policing, what he refers to as the "narrow" and "wide" role definitions of policing. He sees the narrow role as concentrating on and

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[2]ibid., p. 11. Ten percent for the Native sample as compared to three per cent for the Whites.

[1]Griffith, C.T. and J.R. Yerbury, "Natives and Criminal Justice Policy: The Case of Native Policing", (1984) 26(2) Canadian Journal of Criminology, 147.

[2]ibid., p. 149.

[3]Depew, R. Native Policing in Canada: A Review of Current Issues. (Ottawa: Dept. of the Solicitor General, Research Branch, 1986) p. vi.

emphasizing "crime-fighting and the apprehension of criminals", while the wide role "accommodates the principles of native social control and order maintenance, thereby enhancing native cultural traditions and minimizing 'hostile dependency'".[1] These general conclusions seem to be shared by Havemann et. al. They would appear to be arguing that,

> cross-cultural education for law-enforcement personnel and indigenous peoples, as well as public legal education for indigenous peoples, will lead to greater understanding and result in less discrimination. This, in turn, may reduce Indigenous over-involvement with the criminal justice system.[2]

It is this line of reasoning which has contributed to the movement towards the "indigenization" of policing. As Depew noted, some of the key themes which have been voiced by Aboriginal groups with regard to policing include:

> (1) a measure of native control in the administration of justice;
> (2) native representation and participation in justice systems;
> (3) the closer integration of the police with the community; and
> (4) the preservation of native culture through stronger ethnic identities and community survival.[3]

The desire for indigenization, or at least cultural familiarity, is supported by Roberts and Skoog. They found that,

> The natives showed a clear desire to have

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[1]Depew, p. 34.

[2]Havemann, Paul et al. Law and Order for Canada's Indigenous People (Ottawa: Dept. of the Solicitor General, Research Division, 1984), p. 29.

[3]Depew, p. 37.

> someone available in the police department who speaks one of the native languages such as Cree or Saulteaux. For the native person, particularly for those accustomed to a bush or rural life style, the police station is often a bewildering and confusing environment.[1]

Several different programmes have been considered. Griffiths and Yerbury examine the recommendations of the federal task force which eventually chose option 3B, the special constable route. They cite the task force as concluding that "within the structure of competent and well organized police forces these constables should be capable of providing a high standard of policing on reserves."[2] And yet, the authors later suggest that relations between Aboriginal people and the special constables have been frequently hostile and that there has been reluctance on the part of Aboriginal people to join the programme.[3] Griffiths and Yerbury contend that the R.C.M.P. have often failed to define a role for the special constables and subsequently the Aboriginal constables are uncertain of their duties, and morale diminishes. Despite a favorable report in the 1978 Evalucan study, Havemann et. al. also appear to be cautiously critical of the choice of the 3B option. In their conclusions they acknowledge the contradiction between external, less culturally aware, impartial police such as the R.C.M.P. and

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[1]Roberts and Skoog, p. 13.

[2]Griffiths and Yerbury, p. 150.

[3]Ibid., p. 151.

the local police who may be subject to family or clan pressure.[4] And yet, they also note the increasing interest in the literature for completely autonomous police, and suggest that,

> The autonomous policing literature may reveal a disenchantment with option 3(b) which emerges when independent researchers allow indigenous peoples to express their real concerns.[2]

Finally, they recommend greater evaluation of the 3B programme and its alternatives.

The Court Process

The problems encountered by Aboriginal people in their contact with the police appear to be relived when they are exposed to the court system. Unfortunately, the formal process employed in the Canadian judicial system can easily become mystifying and incomprehensible to the non-legally trained person. When this is compounded by language and cultural barriers, the isolation can become complete.

Havemann et. al. assert this argument and claim that,

> Indigenous peoples are mystified by the legal language of the courts and as a result do not understand legal proceedings. The process thus is more conducive to guilty rather than not guilty pleas. ... For example, in the literature reviewed the inadequacy, both quantitatively and qualitatively, of legal representation is a major concern.[3]

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[1]Havemann, p. 45.

[2]Ibid., p. 46.

[3]Havemann, et al, p. 53.

This concern is repeated by Verdun-Jones and Muirhead. They cite a Canadian Corrections Association report which claims that,

> most Indian people enter guilty pleas either because they do not really understand the concept of legal guilt and innocence, or because they are fearful of exercising their rights. Access to legal counsel is seldom possible for them. In remote areas, the Indian people appear confused about the functions of the court, particularly where the Royal Canadian Mounted Police officers also act as Crown prosecutors, or where the magistrates travel about in police aircraft.[1]

The figures from the Métis and Non-Status Indian Crime and Justice Commission Report are somewhat more favorable to the court system. Their findings are that the majority of the inmates they surveyed had understood what had transpired in the courtroom at their trials. In fact, they claim that over sixty-eight per cent "said they understood what was going on in court."[2] The report does add the caveat, however, that the majority of those sampled were repeat offenders and would therefore have benefitted from their experience.

This optimism is not shared, however, by Therese Lajeunesse in her report entitled The Manitoba Court Communicator Program - A Review.[3] She claims that most respondents to her survey were

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[1]Verdun-Jones, S.N., and G.K. Muirhead, "Natives in the Criminal Justice System - An Overview, Crime and/et Justice, vol. 7/8, no. 1, 1979-80, p. 12.

[2]Métis and Non-Status Indian Crime and Justice Commission Report, (Ottawa: Ministry of Supply and Services, 1978), p. 45.

[3]Lajeunesse, T., The Manitoba Court Communicator Program - A Review, (Winnipeg: Research, Planning and Evaluation Manitoba Attorney-General, 1987).

not fully aware of the services of the programme. As a result, the researchers document cases where "people tend to surrender themselves to the courts without knowing what's happening and to plead guilty without understanding."[1] Similarly, another respondent claimed,

> I could have used their services because in court some of the words were too big and I couldn't understand. ... I have trouble understanding English and the big words in court. ... Some people plead guilty just to get it over with.[2]

It would thus appear that in Manitoba the concerns expressed by Havemann and Verdun-Jones are still valid.

Clearly, there remains a communication problem for Aboriginal people in court. Although dealing primarily with young offenders in Manitoba, Kueneman et al express some of the more common concerns. In examining "key actor perceptions" of the delivery of justice in Northern and Rural courts, they made the following observations.

> The majority of Native communities expressed suspicion about the fact that the judge, Crown attorney and Legal Aid lawyer all arrived on the same plane. They were concerned that cases had already been decided before the plane landed. In addition, many respondents thought that the court party did not know enough about the community, the offender, the circumstances of the offence, or native culture. ... Key actors believed that interpreters should be used more often. ... Key actors also suggested that less formal language be used in the courtroom. ... This is an important

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[1]Lajeunesse, p. 34.

[2]Lajeunesse, p.34.

> issue in our view because if the court process is to have an educative effect, the proceedings must be understandable.[1]

There have been several programmes which have sought to rectify the problem of incomprehension of judicial proceedings by accused persons. Havemann et al examine the situation. They begin by quoting Morse, who contends that people must move from being simple recipients of services and constraints to a position where they evolve into active players in the delivery process. The authors attribute to Morse the contention that,

> ... problems of inaccessibility, underutilization, lack of outreach and preventive educational programs, lack of legal expertise, and language and cultural barriers could be alleviated by adequately funded autonomous legal services.[2]

The report then proceeds to examine several of the attempts to better integrate Aboriginal people into the court process.

Perhaps the most common of such programmes are the various "courtworker" programmes across the country. While many began as basic interpreter services, many have moved beyond this original role. Courtworkers are seen as a partial solution, a bridge between the court and the accused. The following is an argument for the presence of that bridge.

> Native people seldom had knowledge of the law, the terminology and procedures of the court, agencies from which they could get assistance, how to obtain lawyers, their

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[1]Kueneman, R. et al. A Study of Manitoba's Northern and Rural Juvenile Courts, (Ottawa: Dept. of the Solicitor General, Research Division, 1986), pp. 135-136.

[2]Havemann, et al., p. 55.

> rights, their responsibilities in the process, or the kind of information needed by the court to carry out fair sentencing. Criminal justice personnel seldom had knowledge of Native life style, culture, the motivation behind behaviour exhibited by Native people, the language difficulties they faced, or the consequences of inappropriate sentencing on Native people, such as the special hardships they faced in trying to pay fines or obey inappropriate probation orders.[1]

The courtworker programs have not avoided critical analysis. Much of the criticism centres around the perceived inadequacies of the programmes. For example, Hathaway sharply criticizes the training given the vast majority of courtworkers. He wrote:

> The training methods employed in these programs have been soundly criticized in previous evaluations as constituting an entirely inadequate preparation for new courtworkers. While a rudimentary knowledge of courtworker functions may be acquired by observation, there is no opportunity for the type of systematic reflection and analysis which leads to a true understanding of the working of the legal system and the specific role the courtworker is to undertake.[2]

An unfortunate paradox exists as one of the pitfalls or windows of opportunity for the courtworkers exists in the expansion of their activities. Already integrated and accepted into the community, it has been suggested that the courtworkers assume more duties outside the strict confines of the courthouse

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[1]Native Counselling Services of Alberta, "Native People and the Criminal Justice System: the Role of the Native Courtworker", Canadian Legal Aid Bulletin, Native People and Justice in Canada, Special Issue Part 1, January, 1982, p. 55.

[2]Hathaway, James, "Native Canadians and the Criminal Justice System: A Critical Examination of the Native Courtworker Program", (1985) 49(2) Saskatchewan Law Review, at 210.

and evolve into a para-legal counselling role. In fact, Obomsawin and Jolly found this to be occurring on an informal ad hoc basis in Ontario. They claimed that,

> Courtworkers assist persons with family and civil problems in spite of the fact that the Association's contract does not include such activities. They do so, however, out of necessity because most of the communities which they serve are isolated from other legal services and because they feel they cannot offer services in one part of the law, namely criminal, and then turn a blind eye to the other part of the law, namely family and civil, without losing credibility with the people they seek to serve.[1]

The case of the courtworkers is symptomatic of the lack or scarcity of legal support services in northern or rural areas, areas which are frequently populated by Aboriginal people.

Like so many other areas of the justice system, the literature is increasingly discussing the indigenization of the adjudication process. As Havemann suggests,

> It is widely held that the over-involvement of Indigenous peoples with the criminal justice system and the quality of their experience within that system can be influenced by indigenizing the forum in which sentencing occurs. Tribal courts and the appointment of Indigenous judges and justices of the peace are seen as a means of partially accomplishing this process.[2]

Havemann argues that,

> The indigenization of the office of justice of the peace appears to hold considerable

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[1]Obomsawin, R. and S. Jolly, Review of the Ontario Native Courtworker Program: Report on Stage 5, (Toronto: Native Council on Justice, 1979), p. 5.

[2]Havemann, et al, p. 76.

> potential for giving Indigenous peoples some discretion in the ways they are handled in the criminal process. The tension between Western notions of an independent judiciary and Non-Western institutions such as gerontocracy and subjective community-based justice are the poles in this struggle between the colonial state and the colonized.[1]

Sentencing

Given the vast reduction in the number of jury trials taking place, it is the judiciary which is increasingly becoming responsible for the outcome of the court process. While they are more apt to be delivering the final verdict, judges have always passed sentence on the convicted accused. The literature is vague on the method by which judges arrive at their choices of dispositions available to them in a given case. Other than the common principles of sentencing available through the case law, the process remains something of a mystery. As Havemann notes,

> ... little is known about the rationales behind discretionary decisions of judges. Judges, through their choices of dispositions and sentences, after all, effectively control prison intakes and hence the extent of over-involvement.[2]

Aboriginal people, while overrepresented in the criminal system as a whole, are also overrepresented in terms of receiving incarceration or custodial sentences as a disposition. This phenomenon was documented by Schmeiser in his 1974 study The

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[1] ibid., p. 81.

[2] Havemann, p. 94.

Native Offender and the Law.[1] Schmeiser found that Aboriginal people were more likely to receive incarceration, but that their sentences were less likely to be lengthy. Moreover, Schmeiser found Aboriginal people to be less likely to receive non-custodial sentences such as probation. This finding is supported by Verdun-Jones and Muirhead who examined the work of Hagan in his study of a sample of all offenders admitted and sentenced to Alberta provincial institutions over a two month period in 1973.[2] Verdun-Jones and Muirhead support Hagan's contention that,

> Although Native persons tend to receive smaller fines, this is not a concession to disadvantaged circumstances or even an expression of paternalistic leniency, rather it is a product of the offenders' repetitious involvement in minor offences. In different terms, when legal variables are controlled, the fines imposed on Indian and Metis offenders approximate those imposed on whites.[3]

Examining the incarceration rates for Natives in Manitoba, McCaskill found that the trend in Native involvement has changed. In his longitudinal study Patterns of Criminality and Correction Among Native Offenders in Manitoba: A Longitudinal Analysis,[4]

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[1]Schmeiser, D.A., The Native Offender and the Law, (Ottawa: Information Canada, 1974).

[2]See Hagan J. "Criminal Justice and Native People: A Study of Incarceration in a Canadian Province". Canadian Review of Sociology and Anthropology, Special issue (August 1974) p. 233.

[3]Contained in Verun-Jones and Muirhead, p. 14.

[4]McCaskill, D. Patterns of Criminality and Correction Among Native Offenders in Manitoba: A Longitudinal Analysis, (Saskatoon: Correctional Service of Canada, Department of the Solicitor Genera, Prairie Region 1985).

McCaskill compared 1984 statistics to those he gathered in 1970 as a means to delineate variations over time. McCaskill found that Natives in Manitoba were committing more serious crimes which resulted in longer sentences. He reported that,

> Native offenders are committing more serious crimes and sentences tend to be longer now (1984) than was the case in 1970. In 1970 70% of the sample had received sentences of between 2 and 4 years compared to 38% in 1984. Conversely, 31% of offenders had received sentences of 4 years or more in 19844 compared to only 12% in 1970. It is obvious that Native offenders are receiving longer sentences for more serious crimes now then was the case in 1970.[1]

This contention of McCaskill's is supported by Jackson in his report for the Canadian Bar Association titled Locking Up Natives: A Report of the Canadian Bar Association Committee on Imprisonment.[2] Jackson documents a corresponding increase in Native incarceration. He states that,

> In the Prairie region, Natives make up about 5% of the total population but 32% of the penitentiary population ... Even more disturbing, the disproportionality is growing. Thus in 1965 some 22% of the prisoners in Stony Mountain Penitentiary were Native; in 1984 this proportion was 33%. It is realistic to expect that absent radical change the problem will intensify.[3]

These findings of McCaskill and Jackson would seem to at least partially support the contentions of Schmeiser and Verdun-

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[1]McCaskill, p. 12.

[2]Jackson, M. Locking Up Natives: A Report of the Canadian Bar Association Committee on Imprisonment.

[3]Jackson, op. cit., p. 2.

Jones. Clearly, Natives are incarcerated more than whites, and there would appear to be a trend developing - at least in Manitoba - away from alternative dispositions for Native offenders and toward incarceration or longer periods of incarceration.

The literature also suggests, however, that the lack of legal services might play a role in the larger number of Aboriginal people who are incarcerated. It is suggested that the lack of appropriate facilities for probation, pre-disposition reports, halfway houses, and formal programs are partially responsible for the selection of the imprisonment penalty by judges. For example, Havemann, discussing Hagan's work, claims that,

> The importance of the probation officer and his or her recommendation about sentence is identified very clearly in this study and raises the question of who really formulates the sentencing decision. If her/his advice is taken, the probation officer's perception of success on probation may influence the sentencing disposition.[1]

If we return to the Kueneman study, however, we find that probation services in the northern and rural parts of the province are scarce. Kueneman notes that "most Manitoba communities are too small and remote to have daily access to a probation officer."[2] He also states that,

> Since probation officers are responsible for completing Pre-Disposition Reports, and for

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[1]Havemann, et al, p. 126.

[2]Kueneman, p. 7.

> arranging and supervising many dispositions, they must be more familiar with and spend more time in the communities. .... Without the probation worker, it is almost impossible to develop plans to maintain community interest and to foster a long term community court committee. The range of dispositions available to the court is radically reduced.[1]

Havemann makes this same point, stating that,

> Indigenous offenders may not have equal access to some prison programs, to early release on parole and temporary absence, and to the standard option to prison, supervised probation.[2]

Parole

Aboriginal people seem to be at a disadvantage with parole as well. Indications in the literature are that Aboriginal people are not released on parole with the same frequency as Non-Aboriginal inmates. McInally discusses Newby's 1981 report on Native peoples and the federal correctional system[3] and supports the contention that the typical Aboriginal person's circumstances in prison provide little motivation or encouragement to design a plan for release.[4]

Newby also argues that parole standards are based on "white

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[1]Kueneman, p. 9. Note: one should note that the authors are dealing with juvenile courts primarily, but the essential principle holds true.

[2]Havemann, p. 133.

[3]Newby, L. Native Peoples of Canada and the Federal Corrections System: Development of a National Policy - A Preliminary Issues Report (Ottawa: Corrections Services Canada, 1981).

[4]McInally, L.M. Native Offenders in the Provincial Parole Process: An Exploratory Study (Unpublished Paper, c. 1988).

urban southern middle-class Canada" and hence do not take into consideration Aboriginal attitudes and culture. She argues that this may well result in further systemic discrimination against the prospective Aboriginal parolee.[1]

Havemann documents the success of the Native Counselling Service of Alberta in this area. The authors claim that,

> It is their [NCSA] view that such programs as parole, probation, diversion, fine options, liaison officer programs, and special correctional facilities, all run by themselves, have been "partly responsible" for a decrease in Indigenous prison admission in Alberta.[2]

Young Offenders

Even prior to the implementation of the Young Offenders Act, it was anticipated that the Act would have a profound impact on young Aboriginal offenders. In her review of eleven papers prepared by Aboriginal organizations during the implementation period of the Act, Laprairie found that,

> All eleven papers raise concerns about the impact of the YOA on young Native offenders. .... There is a general consensus that the YOA could have positive benefits for young Native offenders. These will only be realized if adequate funds are provided specifically to meet the special needs of Native youth. A concern with Native culture and the Native reality pervades all of the literature. .... There is agreement that Native problems are best dealt with by Native people themselves. Consequently, strengthening the role of the Native

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[1] Ibid., p. 28.

[2] Havemann, p. 135.

> community in the development and implementation of the youth justice system is presented as a major objective in all the papers.[1]

Section 4 of the YOA authorizes the court to divert the young offender away from the formal criminal justice system and into a community-based alternative programme. There was cause for guarded optimism on the part of Aboriginal groups with regard to this section. It was considered a potential vehicle for an injection of Aboriginal culture and control into the criminal justice system.

As Scott noted,

> It could also provide the forum for the application of Native sanctions through the community setting. However, a necessary prerequisite for a workable alternative measures program would be the extensive involvement of the Native community in terms of planning, operation of programs, and assessment. Additional resources would have to accompany this kind of initiative.[2]

This is thus the double-edged sword of the Young Offenders Act.

> While it is possible that the native community could have input and potentially even control at a number of different stages in diversion programming, ... more importantly, alternative measures programming could provide Native communities with an opportunity to employ tribal/customary law under the sanction of a

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[1]Laprairie, C. Review of the Consultative Papers on the Impact of the Young Offenders Act on Native Juveniles, (Ottawa: Dept. of the Solicitor General, Research Branch, 1984), pp. 38-39.

[2]Scott, A. Alternative Measures Under the Young Offenders Act: A Missed Opportunity For Native Youth? (Unpublished Paper, 1988), p. 3.

government diversion scheme.[1]

The reality has not lived up to the early promise. The concerns of Laprairie about increased funding have come to pass. Scott also outlines some of the difficulties to be encountered in putting such a scheme in place. For example,

> As a basic pre-requisite to any involvement of the Native community in programming under the Young Offenders Act, Native social agencies, young people, parents, Elders and the Native community in general have to be made aware of the implications of the Act. In addition, specific information about the potential for diversion of youth under the scheme would have to be furnished to existing agencies, community-based organizations and individuals.[2]

Unfortunately, the Act has not yet fulfilled its professed destiny vis-à-vis young Aboriginal offenders. The resources and programming have not been forthcoming such that the Act might live up to its potential as a step towards the further indigenization of the justice system. Writing mainly about the experience in Ontario, Scott documents the minimal implementation of the procedure for alternative measures. She claims that,

> The Ontario government responded with a program which meets the requirements under section 4 of the YOA, but is flawed in a number of respects. It is unnecessarily complex, restrictive in scope, and was designed with a "minimal funding commitment in mind." The program is being administered solely by existing probation and parole

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[1] Ibid., p. 15.

[2] Ibid., p. 18.

staff.[3]

Such assessments document good reasons for the Métis perspective that there is no government commitment to real change.

Child Welfare

The literature, particularly the earlier literature, seems to document a growing dissatisfaction with the then status quo in Aboriginal child welfare policy. As Johnston claims,

> Observers of the social service scene have gradually come to the realization that child welfare is not a totally benign and infallibly beneficent institution. There are instances when the system unintentionally does more harm than good and requires a fine tuning, if not a complete overhaul, to correct the problem.[2]

This concept of inadvertent harm seems particularly applicable to Aboriginal children who come into contact with the mainstream child welfare system. Studies began to appear which gave alarming statistics about the placement of Aboriginal children. Chartier and Mercredi cite some of the early work done and argue that,

> With respect to adoptions, there is a growing trend in the number of Native children being adopted, primarily to non-Native homes. .... This increase in adoption has been viewed by Indian people as a form of assimilation and genocide.

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[1] Ibid., p. 29.

[2] Johnston, P. "The Crisis of Native Child Welfare" in Native People and Justice in Canada, Special Issue, Part II, (Ottawa: National Legal Aid Research Centre, 1982), p. 163.

> However, the Supreme Court has attempted to negate this by ruling that a Status Indian child does not lose his status upon adoption. Nonetheless, this trend has not been acceptable to their Status Indian people.[1]

Chartier and Mercredi identify the question over jurisdiction and the inaction of the federal government as important stumbling blocks towards the provision of adequate child welfare services for Aboriginal children.

> The basic problem in this area has been the federal government's failure to enact legislation which would deal with the welfare of Status Indians and Inuit children and their total abdication of responsibility for Metis and Non-Status Indians. The federal government has attempted to deal with the Status Indian situation through the general provisions of section 88 of the Indian Act. Section 88 allows the enforcement of provincial child welfare legislation and authorizes the provision of related services by accredited child welfare agencies.[2]

A 1982 draft document from federal officials concurred with the argument that Indian communities were not receiving proper child services. The memorandum stated,

> Indian people residing on reserves do not have access to statutory child welfare and preventive social services comparable to other citizens ... services to children and families in Indian communities have been grossly inadequate by any recognized

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[1]Chartier, C., and Mercredi, O. "The Status of Child Welfare Services for the Indigenous Peoples of Canada: The Problem, The Law, and The Solution", in Native People and Justice in Canada, Special Issue, Part II, (Ottawa: National Legal Aid Research Centre, 1982), p. 164.

[2]Ibid., p. 164.

standard.[3]

This problem is compounded when considered in light of the cultural barriers which often exist between child services organizations and Aboriginal families. Johnston, discussing the Hawthorn Report, claims that,

> The public's knowledge of Native peoples does not match public misconception. This is true, too, of the judges, lawyers, social workers and child care workers who constitute the child welfare system -- few of whom are Native people. It is fair to say that most of those who work in child welfare do not fully appreciate the cultural differences which distinguish Native and Non-Native people. Nor do they understand or recognize the unique and distinctive approaches to child rearing which have been an inherent feature of Native life for generations.[2]

Once again, indigenization becomes a common theme running throughout the literature, offered as a solution to years of problems and hardships created by cross-cultural strain and misunderstanding.

Chartier and Mercredi also argue for indigenization:

> It is suggested that band councils would have jurisdiction over Status Indian children, on and off the reserve. With respect to Métis and Non-Status Indians, it is proposed that there be provision for Native Children's Aid Societies. The enforcement and adjudication within reserves and Métis colonies can be by tribunals established in those centres.[3]

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[1]Johnston, p. 175.

[2]Ibid., p. 177.

[3]Chartier and Mercredi, p. 171.

In his work, In the Best Interest of the Metis Child, Chartier seems cautiously satisfied with the progress taken in recent years in the area of Indian and Métis child welfare. He seems to have accepted that this will remain a provincial responsibility. He claims that,

> The federal government has adopted the position that the Métis are a provincial responsibility. As such no specific initiatives have been undertaken by them for the Métis. This is not to say that the Métis have not benefitted from general programs and services provided Canadians as a whole. Programs such as housing, economic development and multi-culturalism have been of some assistance.[1]

Chartier reviews the mandate which was developed by the Metis National Council with respect to child welfare. He states the basic tenets to be:

(a) Jurisdiction and authority over child welfare issues must be vested in Métis governments.
(b) Mandated authority must come from the Métis communities themselves and must receive government recognition.
(c) Control must remain in the hands of the communities.
(d) Direction for programmes and services must come from the communities.
(e) Accountability, both political and administrative, must in the first instance be vested in the Métis community, then to the co-operating government departments.
(f) A philosophy that Métis children must be ensured equal rights and treatment regardless of the province of residence.[2]

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[1]Chartier, C. In the Best Interest of the Métis Child, (Saskatoon: University of Saskatchewan, Native Law Centre, 1988), p. 58.

[2]Ibid., p. 80.

Chartier claims that the jurisdiction issue is not solved, but doubts federal involvement. He asserts that,

> As the issue of whether or not the Métis fall within federal jurisdiction under section 91(24) has not been resolved, it is unlikely that the federal government would consider legislating provisions dealing with Métis child welfare.[1]

Chartier thus turns his attention to the provinces and their child welfare legislation. Chartier seems at least partially favorable towards Manitoba's recent Child and Family Services Act.[2] In particular he points to sections 8 and 11 which entitle services which respect language and aboriginality and section 10 which gives communities the right to participate in services as being important steps forward. He also writes with approval of the sections which advocate policies of placement in Manitoba first, and the involvement of a "Native Placement Procedures" policy.[3]

Chartier sees the Métis community itself as being the source of the best eventual solution. He writes:

> Métis communities, whether they are self-contained units or are large numbers of families living within non-native settings, feel the brunt of the existing child welfare system. They are on the front lines. At the same time, it is the Métis community which possesses the resources that must be called upon to correct the current imbalance

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[1] Ibid., p. 81.

[2] S.M. 1985-86, c. 8.

[3] Ibid., p. 62.

in the child welfare system.[4]

Finally, Chartier ties in his recommendation for indigenization of child welfare to eventual self-government. He asserts that:

> In pursuing the right to assume authority with respect to the well-being of the Métis children and families, the Métis are essentially expressing their right to self-government, albeit within a limited sphere.

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[1] Ibid., p. 89.

PART III

THE METIS IN MANITOBA

THE METIS IN MANITOBA

A. Métis: The people and the term

The term "Métis" has had various historical denotations. It is useful to refer to them in order to explain the adoption of a particular meaning for the present purposes.

According to Brown[1] the term "Métis" is one of several historically variable terms such as Michif, Bois-Brûlés, Chicot, Half-Breed, Country-born and Mixed-Blood, which have been used in Canada and some parts of the Northern United States to describe people of mixed North-American Aboriginal and European ancestry.[2] "Métis" is derived from the French term which has historically been applied broadly to the descendants of Aboriginal-European parentage but more specifically to the group associated with the Francophone population of the Red River region in present day Manitoba.[3] Until quite recently the term was rarely applied on an individual basis, to persons of Aboriginal ancestry who were non-French. It was not extended in its collective usage, to

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[1]J.S.H. Brown, in The Canadian Encyclopedia, Edmonton: Hurtig, 1985, pp. 1124-1127, at 1124.

[2]An example of the loose usage of different terms in reference to the same group of people can be found in Schofield's references to "half-Breeds", "savages", "Metis", "New Nation", "Bois-Brulés", and "Half-Breeds" on pages 133, 134, in F.H. Schofield, The Story of Manitoba, Winnipeg: The S.J. Clarke Publishing Co. 1913.

[3]Jacqueline Peterson and Jennifer S. Brown, The New Peoples: Being and Becoming Métis in North America, Winnipeg: University of Manitoba Press, 1985, at 5.

populations outside western Canada or to those with no historical connection to the Red River group.[1] In Manitoba the term was rarely used by English speakers prior to the 1960's,[2] but, by the 1970's, the term "had burst its linguistic and geographical confines ...", and "had come to signify, in certain parts of Canada and in the northern border states of the United States, any person of mixed [Aboriginal - white] ancestry who identified him -- or herself and was identified by others as neither Indian nor White, even though he or she might have no provable link to the historic Red River Métis."[3] Foster, in his treatment of the meaning of the term in 1979, wrote as follows:[4]

> While scholars and laymen alike agree that the term refers to persons of mixed Indian [Aboriginal] and Euro-Canadian ancestry, it is difficult to obtain a more precise definition. "Métis" can refer to individuals and communities who derive some of their cultural practices from non-Indian native communities whose origins lie in the pre-1870 West. In other instances, the term is used to refer to individuals whose circumstances of birth suggest "Métis" as preferable to the frequently pejorative term "Halfbreed". On occasion, the term also encompasses non-status Indians. [This term is generally used in Canada in reference to Aboriginal persons who are not "Indians" within the meaning of the federal Indian

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[1]Peterson and Brown, op. cit., p. 5.

[2]Jean H. Lagassé, The People of Indian Ancestry in Manitoba: A Social and Economic Study. Winnipeg: Dept. of Agriculture and Immigration, 1959, vol. I, pp. 54-56.

[3]Peterson and Brown, op. cit., p. 5.

[4]John Foster, "The Métis: The People and the Term", in A.S. Lussier, ed., Louis Riel and the Métis, Winnipeg, Pemmican Publications, 1979. Reprinted 1983, pp. 77-86, at 78.

> Act, R.S.C. 1985, c. I-6]. Thus, in one circumstance, the term conveys a sense of cultural identity and, in another, a quasi-legal status. Perhaps the most useful view of the term today is as a label identifying a segment of western society which, in addition to recognizing an ancestry of mixed Indian and Euro-Canadian origins, seeks to realize various interests through particular political goals and actions.

In light of that comment, it is useful to turn to an examination of the political goals that have been enunciated by the organizations which represent the "Métis" in Canada, and in Manitoba particularly. Such an examination should reveal useful implications for the adoption of a particular meaning of the term and also for the elaboration of recommendations regarding the constituency of these organizations.

At the time Foster wrote in 1979, the Native Council of Canada published documents which articulated its political goals in favour of the interests of the Métis and "non-status Indians".[1] The Council was represented by local organizations in the provinces, including Manitoba, and the territories.

The Council's general concern with constitutional legitimism was reflected in its attack on the notion of Canada's "two founding cultures" and its proposal for constitutional reform to "restore both the original intent of the BNA Act[2] in its application to native people, and to elaborate its purpose in

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[1]H.W. Daniels, We Are The New Nation: The Métis and National Native Policy, Ottawa: Native Council of Canada, 1979; H.W. Daniels, The Forgotten People: Métis and Non-Status Indian Land Claims, Ottawa: Native Council of Canada, 1979.

[2]Constitution Act, 1867.

terms of current Canadian realities."[1] In beginning to articulate what it then conceived as the appropriate method of establishing the place of its constituents within Canada, the Council identified the following elements for a national native policy:

1. All native people would be included in such a reference, including Métis, Inuit, and "non-status" Indians.
2. Special status under the constitution would provide the opportunity for native groups, in their various regions, to exercise their rights of self-determination as indigenous people within the framework of Confederation.
3. Consistent with this aim, native people would exercise the right to possess and use lands needed to ensure their economic self-reliance.
4. Native people would also have the right to practice and preserve their languages, traditions, customs and values, and to develop their own special institutions.[2]

In 1982, following vigorous political activity on the part of Aboriginal peoples' representatives, the Constitution of Canada was amended to include, inter alia, the following provision in Part II of the Constitution Act, 1982[3]:

> 35(1) The existing aboriginal and treaty rights of the aboriginal peoples of

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[1]H.W. Daniels, We Are The New Nation, supra, p. 40, note 1.

[2]H.W. Daniels, We Are The New Nation, op. cit., p. 12.

[3]Constitution Act, 1982, being Schedule B of the Canada Act, 1982 (U.K.), 1982, c. 11.

> Canada are hereby recognized and affirmed.
>
> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
>
> ....

At the same time, the constitutional amendment provided for formal discussions respecting the identification of the particular rights to be included in the Constitution of Canada:

> 37(1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year after this Part comes into force. [viz.; before April 17, 1983]
>
> (2) The conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.
>
> (3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of the conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.[1]

Pursuant to section 37 and to a subsequent amendment,[2] a

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[1] ibid.

[2] Section 37.1 enacted by the Constitution Amendment Proclamation, 1983, on June 21, 1984, s 1. The revised amendment contained, in reference to the agenda, only the general reference to "constitutional matters that directly affect the aboriginal

series of conferences were held which resulted in some modifications of the original provisions respecting Aboriginal peoples,[1] but in no agreement respecting the entrenchment of further substantive rights.

Prior to the first constitutional conference in 1983, a political split occurred within the Native Council of Canada which resulted in the formation of the Métis National Council (M.N.C.). The Prime Minister invited M.N.C. representation at the section 37 conference, and the organization was represented, by invitation, at all subsequent conferences. In prefacing his opening address at the 1983 conference, Prime Minister Trudeau stated:

> In recent months it has become evident that the Métis people in great majority felt that they were not properly represented under the Native Council of Canada and for that reason, I invited a representative of the Métis people to sit with us this morning, a representative of the Métis National Council.[2]

Later, before the Standing Senate Committee on Legal and Constitutional Affairs, the M.N.C. explained its focus on Métis nationalism and the distinction between its constituency and

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peoples of Canada", and omitted the particular phrase "including the identification and definition of the rights of those peoples to be included in the Constitution of Canada."

[1]Canada: What the Constitution says about aboriginal peoples, (Ottawa, Dept. of Justice, 1985).

[2]Canada, Standing Committee on Legal and Constitutional Affairs, 1st Session, 32 Parliament, 1980-83. Issue No. 70: Second Proceedings on the Subject Matter of the Constitution Amendment Proclamation, 1983; Thursday, September 8, 1983, at p. 62.

other Aboriginal peoples.

> The Native Council of Canada was a marriage of convenience between two distinct peoples, one Métis, the other Indian, who allied themselves, during the period when neither people had legal recognition, for the purpose of attacking common social and economic problems. However, it was always understood that the political aspirations of the two peoples were fundamentally different. Whereas the Métis based their identity and rights on their distinct nationality and sought their own autonomous land base, the non-Status Indians based their identity and rights on their Indian ancestry, title and treaties and generally sought reinstatement to Indian bands.

The M.N.C. proposed, in the constitution,

> separate schedules of rights for the different Aboriginal peoples and separate processes for defining these rights so that different peoples may pursue their different aspirations without jeopardizing the position of others ....[1]

Following the 1983 conference, the M.N.C. proposed a process of discussions involving the government of Canada, the three prairie provincial governments and the Métis National Council, "to identify and define the rights of the Métis."[2] The First Ministers' Conferences held pursuant to the requirements of the Constitution Act, 1982, as amended, did not result in any

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[1]Canada, Standing Committee on Legal and Constitutional Affairs, 1st Session, 32 Parliament, 1980-83. Issue No. 70: Second Proceedings on the Subject Matter of the Constitution Amendment Proclamation, 1983; Thursday, September 8, 1983, at p. 64.

[2]For a polemic concerning the roles of the M.N.C. and N.C.C., see R.E. Gaffney, G.P. Gould and A.J. Semple, Broken Promises: The Aboriginal Constitutional Conferences, n.d., New Brunswick Association of Metis and Non-Status Indians.

legislative changes which would clarify the meaning of the term "Métis" in the Constitution, or which would elaborate the substantive rights referred to in section 35 of that Act.

The matter of a legal definition of "Métis" in the Constitution Act, 1982, and the question whether the Métis are "Indians" within the meaning of section 91(24) of the Constitution Act, 1867, have not been judicially decided. Academic opinion is divided on these issues.[1]

Further, the question whether the Métis are "Indians" for purposes of paragraph 13 of the Manitoba Natural Resources Transfer Agreement, contained in the Constitution Act, 1930, has not been considered by the Supreme Court of Canada.

It will be recalled that Foster considered the most useful view of the term "Métis" concerned its identification of a group which, in addition to recognizing an ancestry of mixed Aboriginal and non-Aboriginal ancestry, seeks, in Canada, to realize particular goals through political action. In Manitoba, the membership code of the Manitoba Métis Federation, which includes "Red River Michif" people as well as "Half-Breed" and "non-status Indian" persons, indicates the inclusive category of persons which today fall under label "Métis".

For purposes of this project, then, the current usage of the

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[1]See Clem Chartier, In the Best Interest of the Metis Child, University of Saskatchewan Native Law Centre, Saskatoon, 1988, Aboriginal Peoples Constitutional Reform and Canadian Statecraft: Montreal: Institute for Research on Public Policy, 1986, chapters XVI, XVII. Cf. Bryan Schwartz, First Principles, Second Thoughts.

term "Métis" in Manitoba shall govern the use of the term. It includes all Aboriginal persons who identify as Métis and who are not included within the federal government's legislative policies concerning "Indians".[1]

The adopted definition is consistent with the usage of the term in submissions made to the Inquiry.[2]

For the purpose of deciding upon the most appropriate forum for the discussion and implementation of potential reform of the "system", it is appropriate to expand upon the history, and the nature, of the relations between the Métis as a people, and the State, represented by the institutions of the province and of the federal government. In recent times, this larger category of Métis have, through the political action of their representative organizations, been asserting their rights to a proper place within Canada, as a separate nation of people. The Manitoba Métis Federation has been a member of the Native Council of Canada and, since its formation, a member of the Métis National Council. The nationalist movement of the Métis is part of the larger nationalist actions of the Aboriginal peoples of Canada. As these peoples struggle to rid themselves of the marginalized positions to which they have been relegated by the Canadian state, they assert in various ways, their existence within

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[1]It is acknowledged that this adoption excludes some individuals who have recently been returned to "Indian" status by virtue of federal legislation but who express a personal desire to maintain their identity as "Métis".

[2]See, e.g. transcript dated 9 February, 1989, Easterville, at p. 32; transcript dated 3 March 1989, Saint Laurent, p. 57 ff.

Canada, and their right to survival within a society that should make proper accommodation, in its formal institutions, for that existence.[1]

The nationalism of the Métis is a unique phenomenon, as is, indeed, every nationalist movement. According to Ernest Renan, who wrote in 1882, a nation cannot be defined simply. A nation, for Renan, is based on, first,

> a sense of common history, particularly a memory of common sufferings which seem more important than the conflicts and divisions also to be found within that history. Secondly, the people concerned must have a will to live together.[2]

Accordingly, it has been recently stated, "The conditions under which nationhood arises cannot be laid down in advance."[3] Métis nationalism in contemporary Canada is building upon the crystallization of an idealized antiquity focusing upon the resistance to Canadian westward expansion in the second half of the nineteenth century under the inspiration of Louis Riel. Given the established nature of the Canadian state and the lack of a territorial land base for the Métis, the nationalist

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[1]See, e.g. D. Opekokew, The Political and Legal Inequities Among Aboriginal Peoples in Canada, (Kingston, Queen's University, Institute of Intergovernmental Relations, 1987).

[2]R.J. Johnston, D.B. Knight and E. Kofman, (ed.) Nationalism, Self-Determination and Political Geography, N.Y.: Croom Helm, 1988, p. 12. Quoted in Eugene Kamenka ed., Nationalism: The Nature and Evolution of an Idea, (Canberra, Australian National University Press, 1975), p. 12.

[3]Loc. cit. For other discussions of nationalism, see, e.g. Ernest Gellner, Nations and Nationalism, Oxford, Basil Blackwell, 1983.

movement is not one which appears to threaten the integrity of the Canadian state. Nevertheless, as is to be expected when identifiable groups appear to vie for scarce resources upon a common territory, the nationalist movement of the Métis is encountering opposition on the part of governments and on the part of those who favour the existing power structure in Canada.[1]

The nationalist movement of the Métis, which is also based upon an assertion of claims to the rights of Aboriginal peoples[2] has been a very weak bargaining position vis-a-vis governments in Canada. The organizations which carry out whatever "negotiations" that take place are funded principally by the Canadian government, by means of a program of the Secretary of State Department.

The relative political weakness of the Métis in Canada has probably contributed significantly to a general lack of appreciation by Canadians of the basis for the assertion of the Métis claims for radical changes in their relations with the State.[3] The Métis claims rely on status as a distinct "people" in the international law sense, and on the history of their relations with Canada. The claims elaborated by the Métis of

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[1]For example, the federal government has rejected outright the claims of the Métis of Manitoba to the rights of a distinct people; see, Manitoba Métis Federation, "The Rights of the Métis" 1987. Among academics, Thomas Flanagan has vigorously espoused the reactionary view of Métis claims to particular rights.

[2]H.W. Daniels, op. cit.

[3]It is useful to contrast the much greater publicity of the cause of the Quebec people, in this regard.

Manitoba are in the M.M.F. paper appended to this report.[1] For the purpose of outlining the basis of the recommendations made in this report, it is sufficient to state its main arguments:

> (1) We claim all the rights of "peoples" under international law and according to all the high principles which promote the cause of peoples everywhere.
>
> (2) Section 31 of the Manitoba Act, 1870 represents special recognition, in the constitution of Canada, of the distinct corporate character of the Métis people. Because of the failure of governments to perform the obligations in that section (which required the establishment of a land settlement scheme) the Constitution has yet to be legitimized in respect to the Métis people.
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> (3) The Manitoba Act was the basis upon which the Métis agreed to join Canada, but that Act was supplemented by a Canadian promise to grant an amnesty in respect to the events of 1869-70. That amnesty was not given to all. Therefore the basis for agreement is shattered and Canada and Manitoba have an obligation to renegotiate the terms upon which the Constitution can in fact represent the consensus of the governed, in the case of the Métis.
>
> (4) Governments have an obligation based on s. 35 of the Constitution Act, 1982, to negotiate the nature and scope of the treaty and aboriginal rights of the Métis, including the right of "self-government".
>
> (5) Because s. 35 is part of the Constitution of Canada, the rights in (4) above, will have to accommodate a proper balance between the rights of the Métis people and the rights of other Canadians. The Métis must achieve the status of a true partner in Confederation.

In light of this position taken by the M.M.F., certain observations must be made respecting the prospects for reforming the "system".

The entire state apparatus under which the criminal law is enforced in Manitoba relies, for its legitimacy, upon the

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[1]Appendix III.

constitutional law of Canada. The criminal law system, then, suffers, vis-a-vis the Métis, the same illegitimacy as the Constitution upon which it relies as its source of authority.

Notwithstanding the nationalist political agenda of the Métis, the M.M.F. in Manitoba has agreed to enter into discussions with the governments of Canada and the province, to consider ways by which the Métis in the province can exercise significant decision-making powers in respect to matters that directly affect them. Such discussions are continuing.

In light of this context, the politically feasible approach to reformation of the law is to proceed in a manner which is not incompatible with these developments. All measures taken for reformation should be taken in conjunction with Métis representatives. As for changes that go beyond law reform, (the nature of "law reform" is considered in the next part) that is a matter for political resolution between governments and the representatives of the Métis people.

Population Profile

Because of the uncertainty surrounding the meaning of the term "Métis" in Manitoba, it is difficult to present an absolutely reliable guide to the numbers of Métis in the province and the location of their residences. For reference purposes, extracts derived from the 1986 census are appended.[1] In a submission to this Inquiry, the president of the Manitoba Métis

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[1]Appendix IV.

Federation indicated that about 30,000 persons are entitled to vote in the organization's elections. His estimate of the number of Métis in the province is 75,000 to 80,000.[1]

Social and Economic Conditions

Since the beginning of Canadian hegemony in the West, the Métis people have been dispossessed of land, stripped of political power and marginalized in the economic and social life of the general community.[2]

In the discussion of appropriate principles for the analysis in this report, in part I, it was argued that the inequality which the Métis experience in terms of social and economic benefits is related to the unequal distribution of power in Canadian society. That current inequality is documented in the statistical profile designed by a recent survey conducted under the auspices of the M.M.F. The following is a summary of the findings of that survey.

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[1]W.Y. Dumont, St. Laurent, 3 March, 1989, at p. 56. Only members of the M.M.F. are entitled to vote and not all persons entitled to join the M.M.F. do so.

[2]For an historical treatment of the issue, see Marcel Giraud, The Metis in the Canadian West, (trans. G. Woodcock) 2 vol. Edmonton: University of Alberta Press, 1986.

PART IV

ANALYSIS AND RECOMMENDATIONS

IV. ANALYSIS AND RECOMMENDATIONS

1. Principles for Change

The principles are identified in the first part but it is useful to restate them here briefly.

First, Canada and the province have agreed with the Métis that change should take place for the purpose of enabling the Métis to have more control over the decision-making process in respect of public matters that affect them.

Second, the inequality that the Métis experience in Manitoba, in relation to social, economic and political conditions, is part of an inherently unequal society wherein power is distributed unevenly.

Third, the Constitution requires, in section 15 of the Charter, certain kinds of equality for individuals. If governments are bound by the law and are required to find the law, then there is an obligation to determine the nature and scope of the prescriptions of section 15 as they relate to the Métis in Manitoba.

2. The Factual Basis for Change

The unequal involvement of the Métis with the "system" appears to be accepted by the government and need not be elaborated for present purposes. Submissions made to the Inquiry in the course of its public hearings and statements made in the

course of interviews by the researcher, add to the depiction of a situation which appears not to be the subject of dispute.

> There is much highly publicized concern about the proportion of Native persons in the criminal justice system. These numbers are considerably higher, relatively, than the number of Native persons in the general population. It would appear that Native persons are charged, convicted and jailed more frequently than the non-Native members of our society.[1]

Further:

> Because the Native population is generally younger than the non-Native population, the disparities and the difficulties that we are currently perceiving are likely to become worse.[2]

Concerning the "Child and Family Services" system, it was represented that; "The segment of the population in more than 60% of child protection actions are people of Indian ancestry."[3] If the unequal involvement of the Métis in the "system" is indeed related to an unequal position of power in society, then the results of the recent M.M.F. survey serve as a useful indicator of the extent to which the Métis in Manitoba are marginalized as a group.

3. The Métis Perspective and the Objects of this Project

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[1]Legal Aid, Winnipeg, March 14, 1989, "The Cultural Barrier", at p. 1.

[2]Ibid., p. 2.

[3]Ibid., at p. 6.

The basic concern of the Inquiry is to examine those issues which "impact upon the Métis in a manner that is sensitive to the perspective of the Métis people of Canada".

When that perspective is examined in the official position of the M.M.F., the political representative of the Métis in Manitoba, it is observed that the "system" in the Métis perspective, lacks legitimacy because it derives its authority from constitutional sources to which the Métis can not be fairly said to have consented.

On that basis, it is recommended, as indicated in the first part, that the relevant inequality be addressed in negotiations between the M.M.F. and the governments of Manitoba and Canada. The Inquiry has also expressed the goal for this project of "generating recommendations for reforming aspects of the justice system that impact most significantly upon Métis people in a way that is responsive to their current needs and future aspirations."

It is therefore necessary to inquire into the nature of recommendations for "reform". As a starting point it can be assumed the Inquiry meant "the alteration of the law in some respect with a view to its improvement", the definition adopted by the Canadian Law Reform Commission. The implicit limitation in this meaning is the connotation of the preservation of the essential characteristics of the system. It is useful to elaborate the point with a quotation from Hurlbert's work on law

reform:[1]

> A change in law may be a "reform" if it destroys one law but not if it destroys the law or the legal system as a whole . . . . Modern law reformers do not claim the Jacobins as colleagues. If the two elements which are explicit in the definition of "law reform" are change and improvement, the third element, which is implicit, is conservation.
>
> Justice Michael Kirby made the point this way: Speaking in the debate on the First Reform Bill Macauley gives us the clue which the etymology of the English word already suggests. "Reform", he urged, "that you may preserve". Reform implies some degree of preservation of the subject matter of the reform exercise. What is produced at the end of the day is re-formed. It may well be changed, with a view to improvement. But the product is defined to fit within the order that is being "reformed", the latter being modified, developed and adapted to new times, new needs, new circumstances.

If section 15 of the Charter requires some changes in the "system" then the nature of those changes needs to be determined if law reform of the "system" is to be effected according to law. That was the substance of recommendation two, which is explained in the first part. But law reform which retains the essential characteristics of the system might, in some respects, be compatible with the current needs and future aspirations of the Métis.

The Inquiry identified a number of issues of particular interest to it in addressing the issue of change. The approach

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[1]W.H. Hurlbert, Law Reform Commissions in the United Kingdom, Australia and Canada, Edmonton: Juriliber, 1986, at p. 7.

taken in this report is to report upon the perspective of the Métis in respect of those issues. In addition, matters of particular interest on the part of the Métis are also identified. This report, then, identifies particular matters that are of concern, and recommends that the specific reforms or the general restructuring necessary to meet the current needs and future aspirations of the Métis be determined in the course of negotiations between governments and the M.M.F. Because of its status as the political representative of the Métis people in Manitoba, the M.M.F. should be recognized by Manitoba and Canada as the organization through which political accountability to the Métis people of the province is to be secured.

4. The Interviews

Given the limitations of this study, the perspective of the Métis was collected in the following way. The submissions made to the Inquiry were examined.[1] The literature was reviewed, and it forms the basis of the literature review and the select bibliography which are included in this report. Finally, oral interviews were conducted with twenty-seven individuals. Each individual was selected on the basis that he/she might be expected to have a view respecting one or more of the matters identified by the Inquiry as a matter of particular interest to it. That expectation was derived mainly from the known experience and the present, or perhaps, past positions held by

[1]Appendix II.

the individual within the Métis community or the "system". These positions are identified in the summary of interviews.[1] Some individuals expressed a concern that a revelation of their opinion might cause them harm due to such factors as the political sensitivity of the issues and of the present position of the interviewee, or due to expectations about the reaction of their employers, or of persons within the "system", to their expressed views. In order to meet these concerns and to obtain views not colored by such concerns, anonymity was promised to the interviewees. Accordingly, the individuals are not identified by name in the summaries. The summaries are preceded by codes and code summaries which are expected to be self-explanatory and of some use in indicating the distribution of views on particular issues. All the materials relating to the summary of the interviews are collected at the end of this part.

In the following part, the perspective of the Métis is collected in respect of the matters identified by the Inquiry as being of particular interest to it. That is followed by a discussion of general concerns and specific issues that were identified by interviewees and the submissions to the Inquiry. In both, codes are used to permit easy reference to the summary which follows.

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[1]Summary of interviews comprise Appendix I.

THE CHILD WELFARE SYSTEM, FAMILY VIOLENCE AND THE POSSIBLE NEED FOR A Métis OR URBAN ABORIGINAL SERVICE

1. The Child Welfare System

A significant majority of persons interviewed expressed concerns about this system (17/27). The extent of expressed concern must be assessed in light of the fact that not all persons interviewed had particular knowledge about "child welfare" issues.

There is considerable support for the view that Aboriginal people should be in control of services provided to Aboriginal families, including "child welfare" services. (See code summary No. 1, in Appendix I.)

There is a difference of opinion whether an agency should be a general Aboriginal agency to provide services to Métis and other Aboriginal people as well, or whether there should be a Métis-only agency.[1] Some individuals with political experience thought that arrangements between "Indian" people and Métis have not worked in the past,[2] and that such unions are vulnerable to political manipulation by the government.[3] In this context it should be noted that, apart from "Status Indian" people who are caught by federal policy under the Indian Act, there are many

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[1]Metis-only: 19, 18, 17, 14, 2, 1. General Aboriginal: 9, 8, 4.

[2]Codes 3, 14.

3Code 14.

"non-Status" Indian people not so included within federal policy and social programs. In Manitoba, the membership code of the M.M.F. is presently sufficiently inclusive to include "non-Status" Indian people, but there is also some, admittedly relatively weak, political representation of the "non-status Indian" people in the province. In light of these facts, it would be difficult to support the establishment of new endeavours without securing the political cooperation of the groups involved. The first recommendation in this report recognizes this situation in respect of the Métis people. It is useful to note, also, that Aboriginal political organizations are particularly vulnerable to pressures exerted by government.[1]

All those who expressed an opinion on the matter believed that an Aboriginal agency should provide "supportive" services for families. Only one non-Métis Anishinabe professional thought that an appropriate agency should have "mandated" powers to apprehend children, but in the context of a view that Aboriginal people should be in control of all such services and that experience elsewhere shows that Aboriginal people do not intrude by apprehending children in anything near the degree of interference now perpetrated by State agencies.[2] There was

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[1]See, e.g. Joe Sawchuk, "Development or Domination: The Metis and Government Funding", in A.S. Lussier and D.B. Sealey, The Metis: The Other Natives, Winnipeg, M.M.F. Press, 1980, p. 73-94; Joe Sawchuk, "The Metis, Non-Status Indians and the New Aboriginality: Government Influence on Native Political Alliances and Identity", (1985) 17 Canadian Ethnic Studies, p. 2.

[2]Nine persons opposed the establishment of "mandated" agencies with powers to apprehend children: 24, 10, 9, 8, 6, 5,

expressed the view by persons with experience in the Indian agencies, as well as in other agencies, that the Indian agencies do not have the autonomy that is necessary to govern their own activities and to deliver services in their own way. There is also the perception that these agencies lack adequate human and other resources necessary to accomplish their appointed tasks. These matters are cause for concern about proposals for the Métis to take on the full responsibilities of a "mandated" child care agency.[1]

It was particularly in the area of "family services" that interviewees found that the present system is very resistant to change.[2] The medical, legal and social work professions, and such institutions as the Child Protection Centre, are powerful institutions which not only perpetuate the values of the non-Métis population, but which place pressure on individuals and other institutions to conform to their objectives and values. There is pressure from State agencies to foist full powers upon Ma Mawi as a "mandated agency".[3] Respondents have indicated, on the other hand, that such a mandated agency would be "dumped on"; and the fear has been expressed that difficulties arising from

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4, 3, 2.

[1]Codes 2, 3, 4, 5, 6, 8, 9, 10, 24 opposed a "mandated" agency.

[2]Codes 1, 4, 5, 6, 7, 10, 24.

[3]e.g. North-West Child and Family Services, Winnipeg, November 15, 1988, p. 148: "Unless Ma Mawi gets full mandate to deliver all child welfare services, we are stuck with the system we have ...."

such matters as the scarcity of trained and educated Métis personnel would be used to finger the blame on Métis agencies for failure.[1]

There is also the concern that legislative change is not enough if there is no political will to force bureaucratic change; for example, the M.M.F. child services agency is often consulted late in the process of a child placement, at a stage where their decision-making is ineffective.[2]

Métis people appear to be concerned to re-evaluate the so-called "Child Welfare System" in light of the positive harm that it is seen to have perpetrated upon Métis families.[3] Métis are concerned not to follow blindly the models of the existing system; they are apprehensive about the inertial weight of bureaucracies which works against constructive criticism, review, and change. This general view was well expressed by Ron Richard, Vice-President for the M.M.F., in his presentation to the Inquiry at Camperville:[4] There is, he submitted, a self-perpetuating incentive in the system to apprehend children and keep them in the child welfare/prison system because money is allocated by government to the relevant agencies on a per capita basis.

One interviewee offered some insightful comments concerning

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[1]See, esp. codes 4, 5, 24.

[2]Code 1.

[3]Code 3.

[4]Transcripts of Inquiry Public Hearing, Camperville, April 19, 1989, at p. 6

the significance of Métis culture.[1] The culture of the Métis people is less intrusive in the lives of others; it is more gentle and considerate of the feelings of others. These values are being eroded by the modern acquisitive, aggressive society: "It is hard to be kind when you are aggressive". Modern State practices in the criminal law system and child "welfare" system (particularly "apprehensions") are incompatible with the values of the Métis. Métis people are shocked by the impersonal behaviour of bureaucrats within the social welfare system: "Children [are] apprehended ... without emotion."[2] The value on personal relations extends to the family. It is the extended family and the Métis community which are regarded as the proper custodians of the welfare of the Métis children.[3] Attempts to provide "culturally appropriate" services (e.g. with an absence of pressure to conform to expectations of agency workers) are viewed by the system as ineffective.[4]

Métis are shocked by the inhuman attitude of State workers in the system. They perceive it to be wrong to apply the community standards of urban areas to remote Métis settlements in cases where the State is making a decision whether or not to substitute the services of its coercive apparatus for the natural care of a child's family and community. The State's system is

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[1]Code 1.

[2]Camperville, April 19, 1989, p. 4 (S. Klyne).

[3]Code 2, 3.

[4]Code 6.

served largely by city-educated non-Métis, middle-class people who impose their own values upon Métis people by the application of the State's power to interfere in their lives. Such ready interference is incompatible with what appears to be a general Métis attitude of great concern for the privacy of individuals and respect for the personal integrity and feelings of each individual.[1] To these views may be added the observation that the State's ready interference must also be strictly scrutinized in light of Canadian society's own appreciation that one of the main functions of the law is to protect the individual from the State. Changes to the family services system must take place, according to the perspective of the Métis recounted above, in accordance with the wishes of the Métis people. An agency that provides service to the Métis people must be politically accountable to Métis people. The underlying proposition is that Métis people should look after Métis people.[2] Experience leads political leaders to conclude that a general urban Aboriginal service would be subject to government manipulation and its fate would be determined in large measure by the existence of federal policies and procedures, or the absence of them, in respect of portions of the Aboriginal people in urban areas.[3] Political accountability to the Métis people in Manitoba is now exercised through the M.M.F. It follows that a restructuring must take

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[1]Code 1, 14.

[2]Code 2, 3, 14.

[3]Code 14.

place in order to establish this political accountability in respect of the delivery of all social services that are particularly directed at the Métis population. Concern was expressed that social service workers must be distanced from political activity.[1] It is possible, then, to establish policy-making institutions, (such as a board nominated by the M.M.F.) to determine policy in a manner that is responsive to the political pressures of the general Métis community, and which direct the activities of agency workers who are insulated from direct political action. The balancing act between political accountability and political neutrality of workers was best expressed in this way by an interviewee: "It is easier to get rid of a bad politician than to get rid of a bureaucrat who is doing a bad job."[2]

2. Family Violence

This issue was considered by eight interviewees. Two professional Métis identified the despair and insecurity which results from poverty, lack of education and the lack of opportunities in communities, as the sources of violence turned inward.[3] One of these suggested the provision of recreational

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[1]Code 4.

[2]Code 1.

[3]17, 20. For an enlightening sociological analysis of the general problem of Aboriginal communities, see Paul Wilson, Black Death, White Hands, Sydney: George Allen & Unwin, 1982. After analyzing the violence turned inward on Australian Aboriginal communities, Wilson concludes that the only course "is to

facilities,[1] and the other, "safe houses".[2] The latter was repeated by another interviewee.[3]

Two persons recommended a focus on helping the men involved.[4] It is recognized that families in turmoil will require time to heal,[5] and there is a perception that funds must be provided to increase the available services.[6] These concerns, which have to do with the nature and scope of community involvement in the lives of families, must be balanced against the concern that the State apparatus is unduly extending its interference in domestic affairs,[7] and thereby bureaucrats and public servants are usurping the role of the family.

3. The Development of Community-Based Alternatives to Incarceration and to the Courts

This issue has not been considered by the M.M.F., the political representative of the Métis of Manitoba.[8] It can not

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eliminate our paternalism, increase Aboriginal decision-making powers and provide black people with their own land". (at p. 119.)

[1]20.

[2]17.

[3]19

[4]6, 26.

[5]23.

[6]26.

[7]14.

[8]Code 14.

be expected, then, that a consensus could emerge about specific directions for change.[1]

The provincial Legal Aid organization submitted to the Inquiry that the rules of the system are developed without regard to the peculiar situation of the Native person, and applied generally in an even-handed fashion.[2] According to the submission, "The problems are much more fundamental than the superficial question of whether this police officer or that Crown Attorney or Judge has a racist bias." It appears that individuals are arrested for offenses in circumstances where there is no offence to community values. "People used to sit and wait in a friend's house ... now they are arrested for Break and Enter ...."[3]

There is a perception among the Métis that the judicial system is not fair to them:

> . . . [D]o the courts really have the objectivity, the absence of bias, the will, the judicial will to see Canada's first citizens as equal citizens of Canada? Because it has been expressed many times, that even before we appear in a court room, we have been judged, and all that remains left to do is to sentence us.[4]

The alienation of Canada's Aboriginal peoples from the

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[1]A number of interviewees, however, offered criticisms of the prison system: Codes 24, 23, 13, 10.

[2]Winnipeg: Legal Aid submission, R.R. Klassen, March 14, 1989, p. 18.

[3]Winnipeg: March 14, 1989, p. 134.

[4]Norway House: Mayor Don Godin, November 10, 1988.

criminal system, except as victims, operates to teach values in Aboriginal communities which are destructive of social harmony and which lead to behaviour that tends to increase the involvement of individuals as victims of the system. (a) "There is no respect for the court system. We are laughed at ...."[1] (b) "Ever since we were kids we always figured, if it's against the law it's a lot of fun to do it."[2] (c) "Many times when I was young if I wasn't in trouble, I would go and look for it. I hated police and the system."[3]

There appears to be a significant appreciation of the proposition that the consequences of criminal activity should be dealt with in the community; that the publicity which results acts as a deterrent, a factor which is absent in present circumstances where the offender is taken away from the community to be dealt with.[4] Where systemic change involves participation by Métis institutions, the preference is for incremental change based upon experimental endeavours rather than a transfer of comprehensive responsibility for the delivery of particular social services. In this regard, three points are worthy of

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[1]Norway House: Legal Aid, A. Greer, November 10, 1988, p. 43.

[2]Tadoule Lake: Mr. Bussidor, January 12, 1989, p. 30.

[3]Norway House: Albert Ross, November 10, 1988, p. 100. Similarly, in respect of a reserve community it was stated that "disrespect for the law, the triumph of the criminal life style is relayed to children, for whom this becomes normal." Moose Lake: Chief Bender, January 19, 1989, p. 19.

[4]Codes 25, 24, 23, 2.

emphasis:

(i) This view is partly based on a recognition that, generally, Métis people have not been favoured with equal opportunities to gain the education and skills usually perceived as prerequisites for managing the delivery of services.[1]

(ii) This view is partly based upon a recognition that programs to deliver services have been controlled by government funding, which has been perceived as inadequate.[2]

(iii) This view appears to acknowledge that existing Métis organization, (principally, the M.M.F.) do not have at their disposal the resources necessary to develop integrated, comprehensive models to promote their advocacy and support objectives.[3]

There is concern that "alternative systems" will be replications of existing institutions which have manifestly failed to provide justice for the Métis people. New institutions must be developed by the people for whom the institutions are created. The Métis people must be authors of their own particular development. "We must put a human face upon the provider of public services. We must not only replace white faces with brown faces."[4] For greater certainty, the last proposition means that "prison" reform should be done in

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[1]Code 14 and see, M.M.F. Survey Summary, Part III.

[2]Codes 4, 5, 6, 7, 11, 14, 16, 26.

[3]Codes 12, 14.

[4]Code 9.

consultation with prisoners, that reform of the court system should be done in consultation with those Métis people who pass through the system, both as victims and as administrators, and so on.[1]

4. The Applicability of the Indian Policing Model

Métis people have expressed a number of criticisms concerning policing.[2] The weight of opinion seems to be in opposition to the application of the present Indian policing model to Métis communities. Of the twelve interviewees who opted to comment on this issue, eight expressly opposed it.[3] Of the four who favored it, two admitted having no knowledge concerning the existing Indian models.[4] One of these persons favored it on the basis of a strong belief in self-government.[5]

One who spoke in favour admitted the difficulty of policing one's own community,[6] and the other of the two who professed knowledge about the issue discussed the need for a creative approach and elaborated the nature of a workable model.[7] The latter speaker was not a Métis, but an "Indian" professional

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[1]See codes 8, 9, 13.

[2]Codes 19, 16, 13, 7.

[3]Codes 20, 19, 17, 14, 13, 6, 5, 2.

[4]Codes 24, 22.

[5]Code 24.

[6]Code 7.

[7]Code 25.

person.

The policing issue has not been considered by the M.M.F. and it does not appear, from the interviews, to be a matter of priority in effecting change. It should be noted that the notion of creating a Métis police force to enforce laws which themselves, according to the M.M.F., lack legitimacy, is not one compatible with progress at the fundamental level.

If, in consultation with the M.M.F., it is observed that some individual Métis communities wish to appoint their own police officers, it appears that the legislative authority already exists to do that.[1]

5. The Delivery of Legal Services

A number of wide-ranging criticisms were made during the course of interviews. These can be surveyed by referring to the summaries of interviews.[2] It appears that the legal system and its procedures are not well understood, and the adversarial nature of legal proceedings leads to the view that justice and good faith are lacking.[3] This perspective may be illustrated by reference to the expressed concern regarding the federal

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[1]See, The Provincial Police Act, c. P150, and the Northern Affairs Act, c. N100, s. 81(4).

[2]These are included at the end of the Part.

[3]See, e.g. concerns in Code 1, and remarks of Mr. Dumont, St. Laurent transcript, March 3, 1989, p. 13.

government's opposition and denials in the litigation[4] concerning the validity of laws passed in furtherance of Dominion policy which dispossessed the Métis of their lands in Manitoba.[2] Another point which arises from the same litigation concerns the ethical standards of behaviour. Métis people are shocked at the ethical standards of government lawyers such as Ivan Whitehall who told the Canadian public on the steps of a Winnipeg court-house that the Dumont case was a waste of taxpayer's money.[3]

A general problem appears to be the fact that legal services, at least in the form of legal advice, is not available in many Métis communities.[4] A recommendation made for urban areas is that legal services be made available at Friendship Centres.[5]

The Legal Aid system received much criticism.[6] In particular, one Métis who works in the system considered that the Legal Aid system lacks an incentive for lawyers to act in the best interests of their clients because they are paid a fee schedule which makes a guilty plea a monetary advantage to the

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[1]Dumont v. A.G. Canada, 1988. 3CNLR39 (There, indexed as M.M.F. AG Canada) (1988) 3 C.N.L.R. 39.

[2]St. Laurent transcript, March 3, 1989, p. 13.

[3]Code 14. The comment was heard on a local television station by the writer.

[4]Code 23, 19.

[5]19.

[6]Codes 24, 19, 13, 7.

Legal Aid system.[7] This opinion shows the terrible weakness of government programs which pay a fee to those who deliver services on the basis of the number of persons that are "served". The same concern was expressed in respect of the "child welfare" system.[2]

Another existing service organization which attracted criticism is the Native Clan organization. It was perceived by a Métis worker within the system as an organization which favours the existing system and is controlled by it.[3]

The Court Communicator program attracted more critical comment.[4] An issue that has been considered and debated in reviews of the program, and in submissions to the Inquiry, is whether the program should be administered by a native organization. Because of the prominence thus attained by this issue, a few people who were interviewed were expressly asked for their view on the matter. It is clear from the responses that a move to a native organization is generally favoured. In accordance with the recommendation that changes be implemented in consultations with the M.M.F., the issue of change involving the

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[1]Code 7.

[2]Ron Richard, M.M.F. Vice-President, Submission to the hearing at Camperville, 19 April, 1989, p. 6.

[3]Code 24. See also in the transcripts, Winnipeg, Nov. 15, 1988, the same concerns expressed by M.A.R.L. (Manitoba Association of Rights and Liberties).

[4]See codes 2, 3, 4, 7, 16. The program has been officially reviewed by government authorities; the last report is T. Lajeunesse, "The Manitoba Court Communicator Program - A Review", Manitoba Attorney-General, Research and Planning, Feb. 1987.

Court Communicator Program must be dealt with in the same context. A highly-placed elected official within the Friendship Centres in the province explained the general view.[1] According to him, the provincial association of Friendship Centres has discussed the matter of locating the program in an Aboriginal agency. There is general support for such a move, whether it be in Friendship Centres or elsewhere. The expressed concerns about a potential move centre around the need for adequate funding, a capacity in the chosen organization to administer the program, and job security benefits for current employees. Of four other commentators, all of whom have much experience with Aboriginal organizations,[2] all offered the view that a move should be made to an Aboriginal organization. One elected official of a Métis organization stated that his organization received numerous requests to have the program in an Aboriginal organization.[3] His own suggestion was to put it temporarily in Friendship Centres and, in the longer term, to make it part of a new Métis system of justice. Another highly experienced Métis politician thought suggestions to move to Friendship Centres was "a political grab for power", and opposed it.[4] A contention was that workers are afraid of politics. Another Métis interviewee, one with many years experience with the Friendship Centre organization, opposed

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[1]Code 27.

[2]Codes 7, 4, 3, 2.

[3]Code 2.

[4]Code 4.

a move to Friendship Centres. He preferred a move to the M.M.F., and stated that the present workers are not qualified to do their work.[1] The fourth commentator cited poor management as a problem of the program, and suggested a move to an Aboriginal organization.[2] The other interviewee who offered a comment is a professional person who criticized the inaccessibility of the program offices, and indicated that, although the workers' task is broadly defined, they do not appear to do much.[3]

6. Other General Concerns and Specific Issues

In this part are surveyed other concerns and issues which arose from the interviews and the transcripts, and which are not included in the above examination of the matters to which the Inquiry directed specific attention.

A. Alienation from the System. Without doubt, the most salient characteristic of the Métis perspective of the system is the alienation experienced by the people, the fear and the distrust with which the system is perceived. Adding to this sense of alienation is the sense of horror and disbelief that Métis people feel about the kind of values that the system appears to promote. The following are some expressions of the perspective.

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[1]Code 3.

[2]Code 7.

[3]Code 16.

In a submission to the Inquiry, Mr. S. Ranville said that the system is held in fear and it is not trusted.[1] The same was said in St. Laurent, in a submission on March 3, 1989.[2] An instance of the type of behavior which promotes fear was the action of police who attended the hearings and who were seen to be taking notes about the oral submissions.[3] It is this fear which, according to an interviewee, prevents many Métis people from coming forward and speaking to the Inquiry[4] in the Winnipeg area. Another said that Métis are dealt with totally by non-Métis in the system and their fears are passed on from one generation to the next, thus helping the system to maintain absolute control over its victims.[5] In child welfare cases, families agree to what is put to them by the outsiders because the attitude is "I won't win anyway."[6]

The social values which lie behind the legislation and the administration of the system can be entirely alien and perplexing to the Métis people: "Your system of justice affords greater respect for a Pit Bull Terrier than it ... [does for Aboriginal

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[1]Transcripts, Winnipeg, September 14, 1989, pp. 4-5.

[2]Transcripts, Saint-Laurent, March 3, 1989, Mr. Dumont.

[3]Code 4.

[4]Code 4.

[5]Code 3.

[6]Code 6. A professional also stated that most Aboriginal people do not understand "Voluntary Placement Agreements", and are coerced into signing them. Code 25.

people) ...."[7] This is most likely a statement about the expense and formality of court proceedings to decide the fate of vicious dogs, in contrast to the type of justice Métis people are believed to get in the system.

Other examples of shocking behaviour and lack of compassion by police and other workers within the system were given at Inquiry hearings. For example, (a) A twelve year old child appeared in court without shoes .... (b) Four youths were forced to walk a mile over crushed rock, in their stockinged feet .... (c) A man had his clothes and shoes taken and was paraded through Thompson airport like an animal. ... "his whole self was destroyed ..."[2] The sense of alienation must also be related to the historical imposition of a foreign system upon the Métis in a manner which ignored and crushed their cultural institutions.[3] Such an illegitimate system can not possibly pretend to be dispensing justice for the benefit of the Métis community:

> In the case of Canadians generally who are caught within the criminal system, they know the judge is one of them and dispenses law developed through a consensus which includes them.[4]

Although many Métis would appear to believe that more

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[1]Winnipeg: S. Ranville, September 14, 1989, p. 5.

[2]Winnipeg: March 14, 1989, p. 116, 117; Norway House: November 10, 1989, p. 47, (S. Green).

[3]See, generally, M.Giraud, The Metis in the Canadian West, University of Alberta Press, 1986.

[4]Winnipeg: Legal Aid, R.G. Klassen, March 14, 1989, p. 17.

Aboriginal people should be working in the system,[5] that would rectify only one aspect of the present illegitimacy. There is still the point that foreign values are being institutionally supported and promoted. What are the prospects for change, in the perspective of the Métis? The issue was dealt with by interviewees at two levels.

(i) Lack of political will to effect meaningful change. Apart from the various comments made in hearings, at least seven interviewees volunteered their belief that Canadian politicians lack the necessary will to make changes.[2]

(ii) Systemic resistance to change. A number of interviewees, who can be presumed to express a generally-held opinion, opined in interviews that the bureaucracy feels threatened and resists change.[3] Professional Métis people are viewed as creators of problems when they attempt to take action which they perceive as being in the best interests of their clients where those actions are perceived as causing inconvenience to others within the system, or as being contrary to the working of the status quo. Three interviewees expressed this on the basis of personal experience, and viewed the issue as of paramount importance in addressing the potential for change.[4] It was stated that few people who have discretionary powers in

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[1]Codes 25, 24, 23, 17, 16, 10, 6, 4, 3.

[2]Codes 16, 14, 11, 7, 6, 5, 4.

[3]Codes 24, 10, 7, 6, 5, 4, 1.

[4]Codes 5, 6, 16.

the system are independent of political pressures, and consequently their decisions are affected by political influences.[1] Even if legislation is changed, that does nothing to ensure the proper exercise of discretion by bureaucrats in dealing with individual cases.[2] Métis people are insulted and dismayed by the hostile, arrogant and demeaning attitude of bureaucrats within the system.[3]

Even in the case of such endeavours as "affirmative action" policies initiated by legislative requirement, there exists systemic obstacles such as the obligations respecting hiring practices contained in agreements between governments and unions.[4] In family services, social workers, even young recent graduates, display a feeling of being threatened by the presence of Aboriginal workers.[5] The Ma Mawi agency is subjected to pressures from external institutions to conform to the system's values and procedures.[6]

Upon the basis that openness is more likely to lead to justice, it was suggested that a mechanism be established to publish the names of what were called "sanctimonious and sub-

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[1]Code 16.

[2]Code 16.

[3]See, e.g. transcripts from Camperville, April 1989, (the Ledoux submission, and from St. Laurent, presentation of Mr. Dumont, March 3, 1989, pp. 38-9, 41.

[4]Code 16.

[5]Code 24.

[6]Codes 5, 6.

human" bureaucrats.[1] What was envisioned was a sort of ombudsman's office to serve the particular interests of the Métis by hearing and publicizing cases of complaints about injustice in the system. In the area of family services, an experienced Métis interviewee commented that politically accountable agencies are better because, "it is easier to get rid of a bad politician than to get rid of a bureaucrat who is doing a bad job."[2]

B. Perspectives on Options for Change. There are varied views concerning the appropriate directions for change. There is substantial agreement that an improvement in economic conditions will tend to ameliorate the existing problems[3] and it is observed that the availability of recreational facilities is an important factor in reducing crime.[4]

The perspectives concerning the need for a new system, or, alternatively, the need to make changes to the existing system, require some closer examination.

First, there appears widespread apprehension that changes

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[1]Code 4.

[2]Code 1.

[3]Codes 20, 17, 7, 4.

[4]Codes 20, 7. The value of sports and recreation in decreasing criminal activity has been demonstrated dramatically in Manitoba. The University of Manitoba's Fly-In Sports Camp program for northern communities has reported an average decrease in crime of 17.39% in host communities while at the same time total crime rates for all other remote communities rose by 10.6%. See e.g., Northern Fly-In Sports Camps: A Joint Sport Development/Crime Prevention Project, Dr. N. Winther and Cpt. P. Currie, Winnipeg, Manitoba, 1987 (Tel. 261-6676).

must take place incrementally, that Métis people are not now in a position to engage in large-scale restructuring.[1] This is not surprising, given the historical marginalization in Canada of Métis, and the resultant low levels of education and training; factors which would appear to be important in leading the kind of basic reformation which would be necessary to rectify the imbalance considered in the first part of the report. This perspective leads to the recommendation that changes be effected in consultation with the Métis people and stresses the importance of education and training endeavours.

A number of interviewees thought that there is no need for a new justice system, that what is required is to make the present system more sensitive to the values and circumstances of the Métis.[2] The notion that the present system needs to be made more sensitive, rather than creating a new system, is not necessarily at odds with express suggestions favouring the establishment of Métis institutions. The difference between what is "new" and what is merely the existing structure re-modelled, may, in the end, be more in the nature of a semantic difference than a difference of opinion respecting the objectives, functions, and structures of a "justice system".

The M.M.F. asserts the illegitimacy of the present system. That does not mean the Métis it represents might not, if they were to be consulted on the matter, agree to some, or many, of

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[1]Codes 25, 14, 13, 10, 4, 2.

[2]Codes 22, 14, 10, 7, 4, 3.

the existing legislative schemes. The basic concern is that the system now is not one which governs the Métis by their legitmately secured agreement to be governed. Although the M.M.F. has not discussed the matter formally, there exists among influential Métis politicians the notion that what is required is proper representation when Métis people come in contact with the system and proper access to services. What is desired as a new institution is the establishment of a mechanism for delivering advocacy services to the Métis in the province.[1] It is necessary to initiate and implement change only in accordance with the wishes of the Métis themselves.

C. Specific Proposals. A number of specific proposals were made, and are recounted as an illustration of the Métis perspective. The recommendation is that change must be effected with the participation of the Métis and not as a result of external action.

(i) An "Ombudman's" office should be established.[2] One of its functions could be to examine the system's dealing with Métis people, and to publicize defects.[3]

(ii) An official public guardian should be appointed to promote the interests of Métis children who come into contact with the State's "family services" system. In particular, there

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[1]Codes 14, 13.

[2]Codes 3, 4, 26.

[3]Code 26.

is a disastrous lack of representation in court cases involving children.[1] It was suggested that a provincial advocate for Aboriginal children be appointed to look after the interests of children caught by the system, with powers derived from special legislation.[2] The idea was promoted without greater detail.

(iii) The establishment of telephone "hot-lines", that is, toll-free telephone lines available throughout the province to Métis people, which would be used to gain access to various services developed and provided by the Métis (M.M.F.). For example, legal services, information about educational issues, and all aspects of dealings with the system, would be of significant benefit.[3] The significant need for information, advice and assistance on the part of people who have been alienated, marginalized and under-educated is well illustrated by the great variety of requests for assistance which <u>one</u> M.M.F. worker obtains in the course of his work.[4]

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[1]Codes 1, 4, 26. It is instructive to observe that a similar suggestion was made in 1881 as a result of an official inquiry into frauds and abuses within the court system in respect of the dispossession of Metis children of their constitutionally guaranteed lands. No action was then taken on the suggestion and retroactive legislation was passed to validate the "irregularities". See D.N. Sprague, "Government Lawlessness in the Administration of Manitoba Land Claims, 1880-1887", (1980) 10 Man. L.J. 415, G.Ens, "Metis Lands in Manitoba", (1983), 5 Man. History 2; P.L.A.H. Chartrand, <u>Metis Land Rights: Interpreting Sec. 31 of the Manitoba Act, 1870</u>, University of Saskachewan Native Law Centre, (forthcoming).

[2]Code 26.

[3]Codes 13, 14.

[4]Code 15, Appendix I.

(iv) The improvement of access to information and education. This issue was repeatedly identified as one of critical significance.[1] It should be noted that the M.M.F. has, for years, been unsuccessfully lobbying the provincial and federal governments to help improve the education and training of its people. Perhaps the failure of governments to respond to this ideal, non-threatening direction for betterment is a good indicator of the reasons why the Métis are generally very pessimistic about the prospects for meaningful change.[2]

CONCLUSIONS

The involvement of Métis individuals with the system presents a picture of an imbalance of power favoring the facilitation of State intrusion into the lives of families and individuals. In the criminal sphere, individuals plead "guilty" when innocent because they have no hope of winning; in the "family services" sphere, families will agree with agencies to take their children. This submissive attitude towards State authority (as represented by a bureaucrat who is perceived as an arrogant and unfeeling creature who despises them) is taught to the children of families caught within the system, and the easy application of State power is perpetuated for another generation. This unequal power relation exerts a very high toll in human

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[1]Codes 4, 7, 8, 9, 10, 13, 14, 17, 20.

[2]It was also suggested that lawyers and judges be educated about the Aboriginal people. Codes 21, 10.

suffering among the Métis.

It has been submitted that the best perception of the problem involves the attribution of the disparities in the involvement of Métis people with the systems to fundamental structural differences between the systems and Manitoba society and its history.

The structural inequalities rooted in Manitoba's history have left the Métis with little share in the political and economic power in the province. That inequality is reflected in the lack of success of the recent constitutional endeavours to find an appropriate place for the Métis within Canada's fundamental institutions. If "rights" are not absolute, but rather represent a vision of the good society, then, that inequality is reflected in the refusal of governments to accept the claims of Métis to the "rights" of peoples to determine (in a manner appropriate to the maintenance of the integrity of the Canadian State) their own political, social and economic destiny.

That inequality is reflected in the control that government is able to exert over Métis (and other Aboriginal) organizations, and in the way that governments are able to manipulate group cohesion by the imposition of foreign and inappropriate labels to identify Métis and other Aboriginal groups.[1]

The only way in which the fundamental reasons for the

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[1]On this issue, see Joe Sawchuk, "The Metis, Non-Status Indians and the New Aboriginality: Government Influence on Native Political Alliances and Identity", (1985) Canadian Ethnic Studies, p. 2.

disproportionate involvement of Métis people with the system can be addressed are through the political process. At the political level, the governments must recognize the inherent injustice of the present situation and discuss with Métis representatives the mode and form of required structural change. These are not matters the details of which can be delegated to the bureaucracy. They relate, rather, to the bases for the present relationship between the Métis as a group and other Canadians generally. The individuals are not wrong who say that full employment and recreational opportunities will help erase the problems. The conditions for these factors, however, will only be met when the fundamental problem of structural inequality has been resolved.

It is thought that if the fundamental reason for the inequality which exists is the inherent inequality in society, then the best measures that can be proposed are those that, in the long run, address that inequality. Such broad measures are those that increase the power to make effective decisions, increase the information and education needed to address issues of change, and increase "ownership" of the resources necessary to implement change. These are changes which can affect the inequality in power, by an increase in social, political and economic power of the Métis, without threatening the integrity of the Canadian State.

The legal system is challenged to respond creatively so that it can better reach the object of doing justice to all. The general acceptance of the notion of equality for all, reflected

in the new terms of the Charter, particularly in section 15, puts some stress on measures to accommodate a special status or special rights, for particular peoples within Canada. Changing notions of justice are not beyond the realm of accommodation that is possible in our legal and philosophical tradition. At the fundamental level, there are already useful arguments which attempt to show that the move towards special rights for Aboriginal peoples does not need to be conceived as necessarily incompatible with traditionally held views in Canada.[1]

The traditional culture of the Métis of Manitoba was not one apparently motivated by the present liberal-individualistic ideals of Canadians generally. It might be useful if some of the philosophical orientations of the past were to be examined for their relevance and application to the contemporary circumstances of the Métis in Manitoba.

There is a very strong onus on the governments of Manitoba and Canada to show willingness to implement change in accordance with the perspective of the Métis. There is a lack of faith in the system on the part of the Métis. Much of the pessimism of the Métis respecting options for change arise from their observation of inertial weight of the bureaucracy, the State's administrative apparatus. In particular, much of the changes which might be desired, even by all concerned parties, may be difficult to implement because of the need, within the system, to

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[1]See, e.g. "Liberalism, Individualism and Minority Rights", by Will Kymlicka, in Hutchinson and Green, (eds.). Law and the Community, Toronto: Carswell, 1989.

force the cooperation of various government departments and to move and sustain the political motivation to follow through with implementation.[1]

Since the beginning Aboriginal peoples have been subjected to discriminatory and unfair treatment by the State, purportedly for the promotion of the "public interest" or the "common good".[2] Since 1870, the Métis in Manitoba have been treated in this way. The situation was pithily stated by the president of the Manitoba Métis Federation in a submission to the Inquiry: "Economic development such as 'Hydro' dams which benefit the 'public good' are a detriment to self-sustaining Métis communities who are forced onto welfare and become wards of the government, subjected to insensitive treatment by workers who despise them."[3]

It is now the responsibility of governments to initiate changes by accepting that the public good, if it is to do justice, must include the Métis within its vision.

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[1]A very useful illustration of the latter proposition is contained in a letter from Bob Kaplan, P.C., M.P. to H.W. Daniels, President of the Native Council of Canada and Commissioner of the Metis and Non-Status Indian Crime and Justice Commission of 1977: "The implementation of the response is dependent upon the close cooperation of the National Parole Board, Royal Canadian Mounted Police, Correctional Services of Canada and Native organizations and communities". The letter is attached to the Response of the Solicitor General of Canada to the Report of the said Commission, n.d.

[2]On this point generally in respect of Aboriginal peoples in North America, see Chamberlin, J.E. The Harrowing of Eden: White Attitudes Towards Native Americans. (New York: Seabury Press, 1975).

[3]Transcripts: St. Laurent: W.Y. Dumont, March 3, 1989, p. 42 ff.

PART V

SELECT BIBLIOGRAPHY

PART VI

APPENDICES

APPENDIX I

THE INTERVIEWS

CODES

This code is intended to identify each interviewee in a manner which helps to give significance to the expressed opinion, without revealing the personal identity of the interviewees.

The code is used in the tables which follow.

CODES:

NAME: Individual interviewed. AB (representative initials to ensure anonynity)

SEX:
- M Male
- F Female

GROUP:
- M Métis
- A Anishinabe (Aboriginal person but not Métis)
- NM Non-Aboriginal person

POSITION:
- OP Elected officer of a provincial Métis organization
- E Employee or contracted worker for Métis organization
- OA Elected officer of an Aboriginal service organization
- WA Worker (contract, salary, wage, volunteer) with an Aboriginal service organization

Other positions are identified in the ordinary way, (i.e. social Worker, Wpg. Agency)

RESIDENCE: R Ordinarily resident in a Manitoba Métis rural

community

U Ordinarily resident in a Manitoba urban community

* An asterisk indicates that the person formerly held the office indicated, or was formerly a resident of the area indicated in the same way.

OPINION CODES

These statements of opinion are intended to reflect the issues of concern to the Inquiry, and are to be used with the tables which follow it.

OPINION CODES:

1. Identified the child welfare system as a matter for reform

2. Identified "family violence" as a matter of importance which deserves attention by the Inquiry

3. Identified the need for an urban Métis-only service in the area of "family services" (includes Child Welfare services)

4. Identified the need for a general urban Aboriginal "family services" agency

5A. Favoured the development of community-based alternatives to incarceration and to the courts

5B. Opposed the development of community-based alternatives to incarceration and to the courts

6A. Favoured the applicability of the Indian policing model for Métis communities.

6B. Opposed the applicability of the Indian policing model for Métis communities.

7. Identified the delivery of legal services as a matter for reform

CODE SUMMARIES

This summary is designed to be read in conjunction with the Opinion Code. It indicates the distribution of opinions on the questions identified by the Inquiry.

CODE SUMMARIES

1. 24, 23, 22, 21, 19, 14
   25, 26 9, 8, 7, 6, 5, 4, 3, 2, 1

2. 23, 20, 19, 17, 14, 6
   26

3. 19, 18, 17, 14, 2, 1

4. 9, 8, 4

5A. 24, 23, 20, 18, 14, 10, 9, 8, 7,
   25

5B.

6A. 24, 7, 25

6B. 20, 19, 17, 14, 13, 5, 2

7. 24, 23, 22, 21, 19, 17, 16, 14, 13, 10, 7, 6, 5, 3, 1
   25

LIST OF INTERVIEWEES

This coded list is intended to give a quick view of the identity (by sex, group (Métis or otherwise), residence, and professional or other position) and opinions of interviewees, in respect to the concerns specified by the Inquiry. The "Comments" section is to be read with the "Opinion Code" and gives a ready indication of the issues addressed by the interviewee. The reader can then go to the "Summary of Opinion" which follows to determine the opinions given on the topics.

LIST OF EXPRESSED CONCERNS

1. The consequences of criminal activity should involve restitution in the community.

   24, 23, 2, 25

2. Native Clan criticized

   24

3. Court Communicators Program criticized

   16, 3, 2

4. More Aboriginal people within the system

   24, 23, 17, 10, 6, 4, 3

   25

5. Legal Aid criticized

   24, 19, 13, 7

6. Police criticized

   16, 19, 13, 7

7. Should Métis people attempt to establish a family service agency with the power to apprehend children? (a so-called "mandated" agency)

No: 24, 10, 9, 8, 6, 5, 4, 3, 2

Yes: 25

8. Should Métis people establish their own local police forces based on the Indian police model?

Yes: 24, 22, 7, 25

No: 6, 2, 5, 13, 14, 17, 19, 20

9. Prison system critized

24, 23, 13, 10

10. Bureaucracy feels threatened/resists change

24, 10, 7, 6, 5, 4, 1

19 publish names

11. Métis/Aboriginal people either fear or distrust the system

23, 6, 4, 3

12. Suggested more availability of lawyers

23, 19

12B. Suspicious of good government intentions to effect useful

change

16, 14, 11, 7, 6, 5, 4

13. Educate lawyers, judges, etc. re. Aboriginal peoples

21, 10

14. Do <u>not</u> need a new justice system, only make it more sensitive

22, 14, 10, 7, 4, 3

<u>Contra:</u> 9, 8

15. Need recreational facilities

20, 7

16. Improve economic conditions

17, 20, 7, 4

17. Improve information and education

17, 20, 14, 13, 10, 7, 9, 8, 4

18. Emphasize need for incremental change or stresses incapacities to undertake short-term/large scale reform on part of Aboriginal agencies

25, 14, 13, 10, 4, 2

19. Telephone hot lines

14, 13

20. "Ombudsman"

4, 3

SUMMARIES OF OPINIONS GIVEN IN INTERVIEWS

No. 1

SUMMARY:

General Comments:

- Perceives attempts by the six Winnipeg agencies to foment conflict between Aboriginal service agencies.
- Many (non-Aboriginal agency) workers have a negative attitude towards Métis people.
- "Child welfare" workers generally come from middle-class homes and expect the Métis poor to adhere to their standards.
- The M.M.F. annual assembly has asked the Board to explore the establishment of a mandated agency. The present proposal of the Northwest Métis Council (of the M.M.F.) is, on the other hand, a supportive and preventative model.
- When a child "comes into care" (i.e. is taken from his/her home by State authorities) the focus of action is placement. In this process the expected role of the M.M.F. agency is to endorse the decision already made. We are deliberately asked for confirmation late in the stage of the placement process. Often we refuse to participate; it is a waste of time.
- There is much work that could be done in finding foster homes but we do not have the necessary staff or resources.

The regular agencies use their positions to grant home care positions to friends and relatives. This system works to exclude Métis people.

- Knows of only <u>one</u> case in which an M.M.F. referral (of a foster home) was accepted. (This was not in Winnipeg).
- It is frustrating that the M.M.F. agency has no access to the adoption registration agency.
- It is disastrous to place Métis children from family backgrounds of poverty into foster homes with amenities like swimming pools -- that gives high expectations to the child -- how is he/she to go back to sleeping on the floor?

<u>Re: Separate Métis Family Services Agency</u>

- An agency designed to provide services to a particular group should be accountable to that group. That is why Ma Mawi's situation is inappropriate. The M.M.F. should be involved in the delivery of services in rural and urban areas. Our politicians should be accountable for the services provided. It is easier to get rid of a bad politician than to get rid of a bureaucrat who is doing a bad job.

<u>Re: Legal Services</u>

- We desperately need legal representation in Court. We would like to intervene in the cases of Métis children to act on their behalf. We got thrown out of court in Swan River.
- Métis families have been pressured by the Court not to

pursue litigation on the threat the judge would take the child away from them.

- Abuse Registry: People should be allowed to defend themselves against allegations. There is no protection now -- people all over are using this.

Re: Aboriginal Culture and the Need for "Culturally Appropriate" Services

- By personal preference I live within the Aboriginal culture. We are taught to be kind to people, to care for others, and to share. Contemporary society teaches us not to do that -- to strive for individual advancement. Once young people adopt these values then they want nothing to do with their relatives. We are taught to have respect for other people's feelings. In contemporary society respect exists only in books, in policies -- it is hard to be kind when you are aggressive -- you have to block out your feelings, your sense of compassion for others. These are the values that are lost. When we lose contact, the children can not go back to their communities. This is a form of cultural genocide. We lose our languages, our values .... We are not a culture of poverty, our value system is strong, our sense of family is strong. The apprehension and caring of children by non-Métis destroys the culture and forces assimilation.

No. 2

SUMMARY:

General Comments:

- Métis people should be judged by their own people in their own communities.
- Need for a restitution mechanism to replace punishment by incarceration
- Need for assistance for inmates and their families.
- Use extended family to assist children of incarcerated persons.
- Apprehension of children by the State is to be avoided.
- Need to develop preventive services re. crimes and alcoholism problems.
- Need for a Métis land base for the exercise of legislative jurisdiction by Métis institutions -- subject to provincial legislative dominance.
- Rejects Indian tribal court model -- need to develop a particular Métis model.
- Re family conflict: Public embarrassment of having matters dealt with within own community would act as a strong deterrent -- this is now absent where people are tried in other centres.
- The move towards Métis self-government should proceed by

incremental steps; "self-government" ideas must be tested in practice.

Q. Do we need present reform of the existing system?

A. Yes. Reform must follow the suggestions from the Métis communities.

Q. Do you have any views concerning the Court Communicator program?

A.
- Most people don't know about it -- only repeat offenders do.
- The program should be within a new Métis justice system.
- We have received numerous requests to have it based in a native organization.
- It should be in The Friendship Centre and for the present, responsible to the provincial Friendship Centre organization.

<u>Re: Child Welfare System</u>

- There should be an M.M.F. agency in Winnipeg and in all M.M.F. regions in the province.
- The present proposal of the M.M.F. to the province follows the Ma Mawi model.

No. 3

* Extensive involvement with Friendship Centres at local, provincial and national level.

SUMMARY:

Re: Court Communicator Program

- Offices should not be located in a Friendship Centre; the program should be administrered by the M.M.F. or its affiliate.
- Present workers are not qualified to do their work.

Re: Family Services Agency

- Should be a Métis agency separate from "Indian" Agencies, unions do not work.
- A Métis agency should not apprehend children but should support families in trouble.
- Concerned that Indian agency problems not be replicated, e.g.
  (a) they do not recognize the Indian way and do not have the autonomy necessary to do so;
  (b) because of (a) above, the public media are able to affirm that Indian agencies are unable to perform their role.
- The Métis community should be the social boundary which

limits interference in family affairs by apprehending children, e.g. use the extended family first, then the Métis community.

- Children removed from their families should be placed in circumstances similar to those of their parents -- it causes harm to children to put them in foster homes that are opulent compared to their own.
- Much family tragedy is caused by the fact the present system controls those individuals caught within it (i.e. those on welfare or whose children have been apprehended) -- the attitude of fear and deference towards the system is passed on to the next generation and the State's control is made easier ....

General Comments:

- Reform is necessary to address the fact that Métis people are dealt with totally by non-Métis and the result is terribly wrong.
- There should not be a segregated system or one which appears to give Métis special treatment, but there is need for change to apply the law with more justice.
- We need more Aboriginal judges.
- Suggests the establishment of a special office responsible to the Attorney-General to suggest changes and to represent the interests of Métis people -- there should be such an "ombudsman" in every urban centre.

No. 4

SUMMARY:

General Comments:

- Makes the suggestion that the names of bureaucrats who are "sanctimonious and sub-human" be publicized to deter such behaviour. ("We need more than one Mike Ward")
- Establish something like an ombudsman for Métis people generally.
- Establish an "ombudsman" like office to deal with actions of the police in respect of Métis people.
- The paucity of submissions to the A.J.I. has to do with pessimism about the prospects for change and fears of repercussions.
- Relates an incident where Winnipeg Police held a gun to a person's head.

Re: Child Welfare System

- Métis people should be involved in providing services and support to families -- concerned that there are not enough resources to do the necessary job.
- At annual M.M.F. assemblies, we are told to try to get a "mandated" agency (which has powers to apprehend children) but I suspect the people do not understand the implications.

At regional meetings I see a "drawing-back" from the position taken at annual assemblies. "Will it put a more human face on it if a Métis person is doing the apprehending? I favour the idea of service pilot projects.

- "Mandated" agencies are feared because people get jobs based on the number of apprehensions.
- Our people need to be educated about these issues and the M.M.F. should undertake that task.
- "No one in Winnipeg Region (M.M.F.) wants a mandated agency".
- Supports the notion of a general Aboriginal family services agency but is also concerned about a potential clash with Ma Mawi.
- The rationale is explained as follows: There is no such thing as a "culturally appropriate problem". Poverty is a human issue and there is no difference between different groups of Aboriginal people in that respect. It is not economically feasible to have three systems in place; make the system treat people more fairly. We need Métis <u>support</u> services.
- As a matter of policy, Aboriginal persons should be appointed within the system.
- The move to establish the Court Communicator program within Friendship Centres is a grab for political power. Experience suggests workers are afraid of politics.

Q. Any views re the issue of "family violence?"

A. "We need a way out of it."

No. 5

SUMMARY:

Re: Apprehension of Aboriginal Children by the State

- In 1985, in the North-West Agency alone, there were four permanent ward orders. In 1986, there were 17. In 1987, there were 15. In 1988, there were 57.
- The system has found a new way of making apprehensions of Aboriginal children -- "child abuse" is the issue now.
- When we train people to find "abuse", they will go out and find it.

Re: Pressure from External Agencies

- People in institutions use "labels" to attach desired consequences to the actions we take, or that individuals take. E.g., If a parent is angered by an apprehension, he is labelled as aggressive, uncooperative. If a regular agency disagrees with our approach of leaving a child with a family, we are accused of leaving the child "at risk". Families are labelled "high-risk" for such things as putting a lower value on consulting a medical practitioner.
- A decision to accept a "mandated" agency should be considered with caution given the external pressures that are brought to bear upon Aboriginal agencies to apprehend

children.

Re: Indian Policing Model

- The police can not be left out in assessing reform.
- Within the system that apprehends Aboriginal people and deals with them, there must be, somewhere along the line of decision-making, an Aboriginal person in order to sensitize the system to the values and perspectives of Aboriginal people.
- Even if people are dealt with by special Aboriginal police, they will be dealt with, in Court, by non-Aboriginal people.
- A basic objection to this model is that the police are applying upon the reserves, a strange system.
- The Young Offenders Act is a separate court system. There are now several existing separate systems.

Re: Child Welfare

- Interviewee has the sense that in most cases not enough analysis of foster homes is done.

No. 6

SUMMARY:

Re: Family Services

- At professional level there is on-going debate about the desirability for a "mandated" agency; there is a need for an urban centre like Ma Mawi which is not mandated to apprehend but which provides support services.
- Pressure is exerted by outside professional agencies upon Indian mandated agencies to apprehend children -- those who want a mandated agency should consider that. There is great resistance to change within existing agencies. Within the present system there is very little to favour keeping families together -- the pressure is to apprehend.
- Cultural differences work against interests of Aboriginal families, e.g.: a different value might be put on seeing a physician and the difference affects the decision of the system's worker to interfere with the family.
- Ma Mawi is subjected to pressure to conform to system's values and procedures.
- Aboriginal professionals who give advice to Aboriginal persons which conflicts with system's approach are perceived as trouble-makers.
- If we were a "mandated" agency, we'd be forced to refer

children to other agencies for supportive services; we would run out of resources.

- Aboriginal people are not staying with the regular agencies -- the direction and administration is not one that Aboriginal people agree with.
- The Child Protection Centre is a powerful, influential agency; there are no Native people in it.

Recommendations:

- Establishment of a centre where people can voluntarily seek assistance. Although such services are provided for in the existing legislation there is not the political will to establish such things.

Re: "Culturally-Appropriate" Services and External Pressures

- At Ma Mawi we provide culturally appropriate services. We do not pressure people; we don't give guarantees regarding court outcomes. We are accused of being too slow. If a person does not want to talk for a while, we are told we are threatening to the person.

Re: Legal Services

- Legal Aid representation stories are horrendous -- the lawyers tell people to agree to six month orders!
- Native lawyers would be helpful.
- In court, the attitude of families is not to resist: "I

won't win anyway ...."

Re: Family Violence

- There is a need for a system wherein it is mandatory for the man to get assistance -- and a need for a Native organization to do that. In cases of convictions for assault, there should be an order that counselling at such an establishment be made a condition of the court order.

No. 7

SUMMARY:

Re: Child Welfare

- Supports the M.M.F. proposal now being submitted to the province.

Re: Alternative Systems

- A separate Métis system is not needed.
- Requests for funding of programs from various Native organizations occur because of governmental funding requirements.
- There is little difference between Métis and other Aboriginal people, but the system should develop model institutions that cater to the needs to do justice to Aboriginal people.
- The Court Communicator Program could be beneficial but it suffers from poor management; it should be under the auspices of a Native organization -- people would then feel more comfortable with it. It must deliver youth services.
- There is a need for many more Aboriginal workers within the system.
- There is a need, e.g., for Aboriginal people who speak Aboriginal languages. e.g. cites case of a youth who

breached probation three times because he did not understand the terms stated to him by probation officer -- he answered "yes", "no", to be accommodating.

Re: Bail

- Cites case of an Aboriginal child who sits in the remand unit of the Youth Centre for three months without bail because of the lack of resources in his home community. Asks if Winnipeggers would accept a child being held that long in Little Grand Rapids?
- There is a need for more programs like Ma Mawi's bail program.

Re: Delivery of Legal Services

- Lawyers are not making themselves understood.
- The Legal Aid system must be changed: it has not the time to do justice, especially in the North. There is no incentive within Legal Aid to help clients because they are paid a fee schedule which makes a guilty plea an advantage to the Legal Aid people.
- There is much abuse of the system by lawyers -- they ask for reports for summary offences. A lot of reports are "baloney".
- The D.O.T.C. Probation Service is severely understaffed, it is set up to fail.
- Summary offences in urban and rural areas must be dealt with

in a different way. Many Métis are poor; the judges must make creative dispositions.

- Suggests a Native mediation service, and alternative measures for youth and adults.

Re: Policing

- It is difficult for people to police their own. The R.C.M.P. 'special constable' is not regarded as a "real officer".
- Aboriginal people need incentives to join the regular R.C.M.P. force.
- Recommends establishment of local police forces in Métis communities in order to overcome language and other problems. In time, these would gain respect. They should apply the general law, same as R.C.M.P. or municipal police elsewhere.

General Comments:

- In the North, especially, there are two main causes of conflict with the law: (1) lack of employment, and (2) lack of recreational services.
- The same is true for urban centres.
- The system is designed to keep people trapped within it.

No. 8

SUMMARY:

General Comments:

- There should be one Aboriginal service system. Aboriginal people are split by government funding policy.
- There is no difference between Métis and other Aboriginal people in the sense that requires special treatment in the delivery of services related to the justice system. Social conditions are the same.
- In designing reform, we must not merely replace white faces with brown faces, we must ensure the people affected participate in their own development.
- An Aboriginal Child Care agency should not be mandated to apprehend children -- there is an incentive to apprehend in the system due to its funding policy.
- An Aboriginal service agency must support the family. The present system treats the child as an individual and not as part of a family.
- We need to be advocates for our people, to try to keep them away from the system.
- In urban areas, we should develop cooperative living models designed by the people in the community who will live with and within these models.

No. 9

SUMMARY:

General Comments:

- There should be one Aboriginal service system. Aboriginal people are split by government funding policy.
- There is no difference between Métis and other Aboriginal people in the sense that requires special treatment in the delivery of services related to the justice system. Social conditions are the same.
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- An Aboriginal service agency must support the family. The present system treats the child as an individual and not as part of a family.
- We need to be advocates for our people, to try to keep them away from the system.
- In urban areas, we should develop cooperative living models designed by the people in the community who will live with and within these models.

No. 10

*Past positions: M.A.R.L., Ma Mawi Board, C.A.S., Parole Officer, 18 years experience in criminal law system, John Howard, E. Fry Society; Native Women's Transition Centre

SUMMARY:

General Comments:

- I perceive no good reasons for establishing a separate system for Métis and Status people. We are all the same in terms of social issues.
- A Métis "mandated" agency would be "totally dumped on".
- Perhaps one-half of one per cent of people in jail should be there -- others should be in community-based places.
- The "Positive Peer Culture" model used at the Agassiz Centre presents the problem to Aboroginal youths that when they go back home they must live within a different reality. What they need is an emphasis on coping with their own environment.
- At the Youth Centre in Tuxedo, there are no programs available for those serving 15 month sentences. There are no trades to learn. The available schooling is inadequate. There are some "life skills" programs but they are not suited to long-term prisoners.
- It is difficult to motivate an Aboriginal community that is poor and has little self-esteem, to participate in efforts

to better the system. Something must be done, however, to change the courts' perception that Aboriginal people are better off in jail or in Winnipeg than in their home rural communities.

Re: Northern Circuit

- The fly-in courts are totally inept.
- The punitive system is senseless because of its delays.

Re: Aboriginal People within the System

- It would be beneficial to have more Aboriginal people working in the system if
  (a) they were willing to be advocates
  (b) they have a strong sense of identity
  (c) they are able to teach others a sense of self-worth by transmitting that sense of identity to others
- There is a need to inform the courts about the Aboriginal experience, i.e., through pre-sentence reports.
- The present system is resistant to change.

No. 11

Also associated with:

- IKWE-WUK Justice Society
- The Alcoholism Foundation of Manitoba.

Past experience:

- Main Street Project
- Winnipeg Housing Authority
- School Teacher
- Nurse in Northern sanatorium
- M.M.F. director

SUMMARY:

General Comments:

- Does not believe the government is committed to change the system because the system needs "minorities".
- The government is afraid of Indian and Métis unions that might strengthen the political position of Aboriginal people.
- The Main Street Project should be run by Aboriginal people who are recovered alcoholics and others who have an interest in the work.

No. 12

SUMMARY:

Re: Should a Métis "Mandated" Child Agency be Established?

- The issue is who will look after Métis children in respect of Child Welfare services? The existence of the issue puts pressure on Métis people to ask for their own agency. If it is accepted that the Métis people should look after Métis children, there is the issue respecting the way of administering such a service. In geographically discrete Métis communities, a Métis agency can be established. Where the people are scattered, a mechanism must be established to permit an agreement whereby another agency can provide services for Métis children and be responsible to the Métis for the delivery of such services.
- There are terrible problems if the work is done badly. There are staffing problems, maintaining control. The Métis see AWASIS and are concerned. They must "grow into it". The organizational readiness of the M.M.F. is low; the leadership is "vague".
- In Winnipeg, we can not afford two agencies, the M.M.F. must become more involved with Ma Mawi. There is a present attachment to it on the part of the Métis people.

No. 13

Also associated with:

- Legal Aid Manitoba
- Volunteer worker in prisons

Past experience:

- M.M.F. elected officer
- Native Council of Canada elected officer

SUMMARY:

Re: Prisons

- Prisoners are getting younger, and they are serving longer sentences.
- Prisoners have extremely limited knowledge of the system and how it works (not as a language problem).
- Little assistance is received on the way to prison.
- The parole requirement that prisoners admit guilt results in innocent people serving long sentences. (Cites two cases known to her -- 17 and 19 years.) They are serving time because they are innocent and will not lie to escape incarceration. One is David Milgaard at Stony Mountain.

Re: Police

- I have yet to hear one positive comment about the policing system.
- Police tend to handcuff people and leave them cuffed even if physical injury and suffering results.
- The typical pattern is for police to cuff people, especially in the North, take them far away to a detention centre, not charge them, and release them without means of transportation home.
- The right to counsel and a telephone call are consistently denied.
- The Indian tribal police model should not be adopted if it administers the existing justice system.

Re: Legal Services

Recommends:

- A toll-free telephone line that gives direct access to Legal Aid counsel 24 hours a day from anywhere in the province.
- In plea bargaining, the issue of guilt or innocence is lost.
- For Legal Aid clients, plea bargaining ensures there will be no appeal. This facilitates the goals of the system at the expense of clients. After a bargain, there is no need for Legal Aid because the case has lost its merit under Legal Aid's criteria for eligibility for aid.

Alternative Systems:

- Unless Métis people can establish their own justice system, then, we should concentrate on advocacy to help Métis people deal with the present system.
- Remodelling of the system is not a worthwhile goal.

No. 14

SUMMARY:

Re: Child Welfare Services

- The M.M.F. has a mandate from its constituents to create such a "mandated agency" but we do not want it all at one time. We do not necessarily wish to adopt the existing philosophy and the current legislation which governs such services in the province.
- The M.M.F. has had a position paper developed in this area; it has been accepted by the M.M.F. Board but it is still subject to revision.
- Does not favour general Aboriginal child services anywhere. Experience shows joint Aboriginal agencies end up in disaster. Indian and Métis people are different from each other, they get different sources of funding.
- The establishment of Ma Mawi was a government response to M.M.F. pressure for our own agency. It was set up to alienate control from the people in favour of government bureaucratic control of Ma Mawi.
- This type of action is typical of government tendencies to defuse political pressure by forming an all-encompassing Aboriginal group (i.e. a group made up of Métis and "Indian" people). It is easy to do that

because whichever group is brought in is happy to acquiesce to its newly perceived acquisition of power.

Re: Family Violence

- Concerned about various public institutions being involved in interference in the private lives of families. Some schools appear to be trying to usurp the role of the parents.
- There is criminal law to deal with violence.

Re: Alternative Systems

- These matters have never been officially discussed at M.M.F. meetings but some discussion is now taking place in respect of the M.M.F.'s intention to submit a proposal to the A.J.I.
- We have no basic problem with the legal system as it is, nor with the courts, except that we can not get proper representation and proper access to services.
- We need an institution of our own to provide advocacy services for our constituents.
- Something useful would be a call-in telephone service to help Métis people in need.

Re: Policing

- We don't want a separate police system but we want our

people to have the information necessary to deal with the police.

- Concerned about the problem of police being placed in a situation where they are acting in a community where they are known personally.
- The issue of following the Indian tribal police model has not been considered by the M.M.F.

Re: Delivery of Legal Services

- It is crucial that legal help be available as early as possible once police contract is made.
- Our great concern is to help our people to avoid the net cast by the system.

General Comments:

- The M.M.F. does not have the capacity to develop grandiose new models of self-government. It is best to let people develop slowly by experimentation.
- Concerned about government opposition to the M.M.F. litigation, and, in particular, about government lawyers' public attacks against it.

No. 15

This worker with the M.M.F. Child and Family Service program has drafted a list of the tasks which have been requested of him by M.M.F. clients. The list is included to illustrate the great variety of demands that are placed upon a worker in a Native service agency.

No. 16

SUMMARY:

Re: Delivery of Legal Services

- Political considerations are significant in the decision-making process within the system.
- Few people in the system are in a politically independent position; therefore, their decisions must be influenced by political considerations.
- Detects no honest government interest in the implementation of affirmative action programs in order to benefit Aboriginal people.
- There are institutional obstacles in the path of programs to include more Aboriginal people within the system. e.g. (1) Contracts between government and unions are incompatible with affirmative action goals. (2) A government minister stated Aboriginal people were not available, or were not interested in a particular position, whereas the interviewee had applied and been rejected on the basis of the problem listed as item (1).

Re: Court Communicator Program

- The scope of their official duties is broad but in practice they sit in docket court and wait for a

reference from the judge in cases where there is a problem of communication. Their actual work hours are very short and their offices are in places where offenders are not likely to find out about them.

Re: Police

- Attitudes of individual officers vary widely but a number of R.C.M.P. treat Aboriginal people without respect, are provocative, and invite assaults upon themselves.
- Not uncommonly Aboriginal people are arrested where they ought not to be under the Bail Reform Act.

Re: Exercise of Discretion by Institutional Officials within the System

- In light of the discretion that is available in decision-making process, the individual is more important than the procedures within the system.
- This includes judges, who have been known to make racist remarks. Such remarks are not generally publicized if they come from the Court of Appeal because there is no public reporting procedure of the discussions in that court.

No. 17

SUMMARY:

Re: Separate Family Service Agencies

- There should be separate Métis agencies because Métis attitudes and values are different and Métis identity as a specific Aboriginal group is being lost.

Re: Family Violence

- Has the impression that it is increasing and that the system must be changed to address the problem.
- Suggestions:

  (a) Increase number of Aboriginal people within the system

  (b) Speed up education of Aboriginal people to accomplish (a).

  (c) Ease the stress of poverty which is a cause of family violence.

  (d) Establish "safe houses" for victims. Poverty and a low self-esteem or sense of insecurity are causes of family violence.
- Sex offenders should be punished and helped.
- These offenders should be removed from their community.

Re: Delivery of Legal Services

- Many Aboriginal people in counselling service agencies are not well-trained, including court communicators.
- Aboriginal people go to jail because they are poor and because they do not understand the system.
- Poverty and ignorance mean jail. That should not be.

Re: Indian Policing Model

- "Need to take great care in considering its adoption ... some Native police are worse than the white ones."
- Native people, and police in particular, need to be "de-colonized".

General Comments:

- General education should be emphasized -- educate to decolonize.
- Ease the poverty and the economic dependence so that people feel good about themselves.
- All these matters are inter-connected.

No. 18

SUMMARY:

Re: Indian Policing Model

- Not familiar with it.

Re: Family Services

- It is important we get a separate service agency because the Métis culture is different from the Indian.

General Comments:

- Favors exploration of alternatives to jail.
- Recognizes there is injustice within the system, but has no specific suggestions to offer.

No. 19

SUMMARY:

Re: Child Welfare System

- There should be a Métis agency separate from Indian. People in the M.M.F. region ask if we have a worker. We don't. We should have.

Re: Family Violence

- Need for "safe houses" for victims.
- Expresses great concern about the fact women and children are being assaulted in their homes.

Re: Delivery of Legal Services

- Legal Aid system has been of no use to me and others have said the same.
- The perception is that non-Legal Aid lawyers are better. This view is aided by Legal Aid lawyers who refer clients to other lawyers.
- There should be some legal services available in each M.M.F. Region. Now people need legal advice, such as families who are victims of violence, but there are no lawyers available.

Re: Courts, Punishment

- Perceives that courts do not hand out just and rational sentences -- some are too severe and some too lenient.
- Concerned especially about offenders who physically hurt others and are "getting away with it".
- Concerned about a perceived increase in incest and child molesting.

Re: Policing

- Criticizes "special constable" program and suggests more Native people should join the regular R.C.M.P. Aboriginal officers are more sensitive and more trusted.
- The special constables are generally not well regarded by Native people.

No. 20

SUMMARY:

Re: Indian Policing Model

- These existing models have proved themselves ineffective.
- There is much "politics" involved in establishing a separate police force and it is feared that would not benefit the Métis.
- Métis live within manicipalities and do not have discrete land bases like Indians do. This would present a difficulty.

Re: Family Violence

- Caused by poverty and lack of education and opportunity.
- There is nothing hopeful to do in Métis communities and the violence is related to despair.
- "We are shooting ourselves."
- We need recreational facilities.

Re: Alternatives to Present System

- Favors establishment of community-based programs to deal with offenders; suggests these be established in direct consultation with each community rather than by way of the political organizations.

General Comments:

- Public information respecting public services should be made available in Aboriginal languages and in French.
- Further, more easily readable pamphlets should be used for the benefit of people with low reading abilities.

No. 21

SUMMARY:

Re: Child Welfare

- Need for a separate Métis system, apart from Indian system.

Re: Delivery of Legal Services/Alternatives

- Currently the law has a different application in the North; if the law is to be the same for all, then the government must provide the services necessary to permit an even-handed application of the law.
- Bring the courts closer to the people, if they are to be effective.
- Judges and lawyers need to be educated about the cultures of Aboriginal peoples.
- There is not a need for a new system but the present system must be sensitized to the circumstances of Aboriginal people to do justice.

No. 22

SUMMARY:

General Comments:

- Favours Métis family services agency.
- Favours adoption of the Indian policing model but only on the basis that, "if Indians can have it I don't see why we can't." Admits not possessing any knowledge about the Indian Policing model.

No. 23

SUMMARY:

Re: Child Welfare

- Aboriginal people are not being served by the existing system -- the money allocated to them should be turned to better use by setting up new systems.
- There are not enough Native people now working in the system -- those who are there are forced to work along with foreign values.
- What is needed is Aboriginal people working with Aboriginal families in a "wholistic" way.
- We need some kind of "self-government" in the city, and it is valuable that Aboriginal people be given a choice whether to seek assistance from a Métis or an Indian service agency.
- There is a need to redesign administrative structures according to philosophical orientations that are appropriate for Aboriginal people.

Re: Family Violence

- More work needs to be done with men -- they do not feel good about beating their wives. They need self-respect and a sense of identity.

- Men can find another woman, and the cycle is repeated.
- Families in turmoil will not heal overnight.

Re: Community-Based Alternatives

- We have to be more creative than building half-way houses.
- After prison, people return to the same circumstances that led them to jail.
- Emphasize restitution to the community.
- Have the consequences of criminal acts dealt with in the community where a person's reputation is sensitive.
- Use kindness in a better system.
- People are now lost and confused, they have to be shown again that it feels good to help people.
- People are suspicious of the system; we need to use the extended family to help, especially in the cities. We can make up extended families in the city.
- Establish places (such as coffee houses) where people can get together, and use this as a way to teach people and to get them to help design alternatives.
- People enjoy getting together -- that is why many go to the Main Street strip and why people drink alcohol -- turn this desire to constructive purposes; develop a sense of community in the cities.

Re: Legal Services

- We need more readily accessible services, such as a lawyer at the Friendship Centre.
- People who provide services should make these services available in the community where people are comfortable about seeking them.
- Now people get inferior service because they do not know who to ask for help.
- We should look at options for prison but the "fine option" is a stupid thing for some women who are forced to pay for babysitters in order to do community work!
- There must be more justice than giving short jail sentences which break up families (the children and the furniture are lost) and make everything worse.
- If ever anyone has to go to jail, that can be done in the community.

Re: Bail

- We need to establish something like a bail board for Native people who can not find anyone with a job to post bail for them.

No. 24

SUMMARY:

Re Child Welfare System

- Opposed to establishment of Aboriginal "mandated" agency with powers to apprehend children.
- We should provide supportive services to families, and we are capable of developing our own systems.
- Has not considered the matter of establishing separate Métis and Indian agencies. Most divisions among Aboriginal groups today have been imposed by government policy.
- Would support the establishment of a Métis family services agency.
- Families have suffered enough from apprehensions; that activity is opposed to our goals.
- Use the extended family to help people.

Re: Alternatives

- The present system does not work.
- Native Clan organization is seen as a means of control by the system; it appears to be working within the system.
- People need a system of support from the first point of contact with the legal system, and Aboriginal people

should be providing those support services.

- People now know little about their rights; they will take whatever is given to them as the fastest way out of the system.

Re: Legal Aid

- It provides a poorer service than given to those who can afford to pay.
- We need some kind of victim service.

Re: Prison

- There is no treatment in jail. People return to the same situations where no help is available, after leaving jail.
- We need to look for alternative systems; offenders should go back to their community and make amends.
- Strongly supports the use of older people to give guidance.

Re: Police

- Favors establishment of Aboriginal police forces on the basis of a strong belief in self-determination and self-government.
- We should encourage more Aboriginal people to join the existing forces -- these now discourage Aboriginal people from trying to join.

General Comments:

- When Aboriginal people are given public services by Aboriginal people, there is an immediate benefit; there is an instant rapport and trust is established.
- Many social workers in the regular agencies feel threatened by an Aboriginal agency, even young ones.

No. 25

SUMMARY:

General Comments:

- The Wiidjiitewin agency in Ontario provides a useful model of an Aboriginal family services agency that relies on the energy, rights and powers of the community rather than on powers delegated by general legislation.
- The establishment of a Métis-only agency would present practical problems (i.e. husband "Indian", wife Métis) and there are no relevant distinctions between Métis and other Aboriginal people to warrant separate service institutions. The proposals for separate agencies are based on political considerations.

Re: Alternatives in Communities

- Undoubtedly community-based alternatives should be established, but only after much debate and the achievement of consensus in the community.
- Dispute resolution mechanisms must be truly community-based; their potential for success is related to the 'weight' and respect of people who make decisions or act as mediators.
- It would not do for an agency external to a community to

appoint persons to act in matters of dispute resolution.

Re: Policing

- Communities should be placed in a position to be creative about policing their own. In all police systems, local politics are a matter for concern. A working model is to appoint police officers from the area but not the immediate community. Further, individuals must be carefully "matched" to the communities in which they serve to avoid the influence of "family disputes". Another workable model is to rotate police officers among several communities.

Re: Legal Services

- The legal system must extend itself into Aboriginal communities in ways demonstrated by the Northern Paralegal Project. (A misnomer, they are essentially community legal resource workers.)
- It is necessary for communities to become informed and enabled to make decisions concerning the aspects of the present system that are appropriate for extension into the communities (as above) and the aspects that ought to be replaced by community-based alternatives.
- The transition must take place incrementally.
- The nature of the relevant changes requires a great degree of community discussion and consensus.

- Governments must be active to help communities establish systems based on the rights recognized in section 35 of the Constitution Act, 1982.

No. 26

SUMMARY:

Re: Child Welfare and Family Services

- Recommends appointment of a provincial advocate for Aboriginal children, with authority derived from special legislation, to look after the interests of all Aboriginal children who are caught by the system.
- Recommends the establishment of an agency charged with a "watchdog" function to monitor the work of the system in respect of its treatment of Aboriginal people. At a minimum, the value of such an agency would derive from the effects of giving publicity to abuses within the system.
- A Métis-only agency is fine, but there is also a need to look after the interests of Aboriginal people who are not "Status" Indians, and who live in the cities. There is a woeful lack of resources and services in cities.

Re: "Voluntary Placement Agreements"

- The term is a misnomer in its application to Aboriginal people because most (a) do not understand them, and (b) are coerced into signing them.
- These "agreements" are particularly damaging because they

work against the parents in court.

- Aboriginal people are not concerned to seek "mandated" powers to apprehend children because such state intrusion is not compatible with traditional values.
- Recommends an increase in "in-home support" for parents and an increase in wages for "home-makers" and foster parents.
- Recommends the provision of specialized treatment to foster homes fostering Aboriginal children with special needs.

Re: Family Violence

- Recommends an expansion of services to families burdened with such problems, (i.e. increase funding to permit services for teenagers in programs such as that at Ma Mawi). (Funding has been applied for and refused by the province.)
- Recommends appointment of "play therapist" for children.
- R.C.M.P. do not respond adequately to calls re. family violence.

General Comments:

- Large hospitals should be required to employ Aboriginal people, especially in areas like the Child Protection Unit.
- The socio-economic circumstances are at the root of the

social problems encountered by Aboriginal people.

- The school system is still racist; there needs to be more Aboriginal people in the system to act as positive role models.
- A systematic mode of reviewing media coverage of Aboriginal issues would be useful to counteract the negative attitude of the media towards Aboriginal people.

Re: Legal Aid

- It needs to be more responsive to the needs of Aboriginal people.
- It is not accessible enough.

No. 27

SUMMARY:

Re: Court Communicator Program

- The provincial association of Friendship Centres has discussed the matter of locating the program in an Aboriginal organization. There is general support for that, whether in the Centres or in another organization. The concerns centre around the need for appropriate funding, a capacity in the chosen organization to administer the program, and job security benefits of current program employees.

APPENDIX II

RECORD OF TRANSCRIPTS

APPENDIX III

"THE RIGHTS OF THE METIS PEOPLE"

MANITOBA METIS FEDERATION

APPENDIX IV

ABORIGINAL POPULATION OF MANITOBA

1986 CENSUS EXTRACTS

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