

ABORIGINAL JUSTICE IMPLEMENTATION COMMISSION

THIRD QUARTERLY REPORT

SEPTEMBER 30, 2000

Commissioners:

**Paul L. A. H. Chartrand
Wendy Whitecloud**

Elders:

**Eva McKay
Doris Young**

ABORIGINAL
JUSTICE
IMPLEMENTATION
COMMISSION

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Paul L.A.H. Chartrand
Wendy J. Whitecloud

440 - 500 Portage Avenue, Winnipeg MB R3C 3X1
Phone: (204) 945-7331 Fax: (204) 948-4701

September 30, 2000

Honourable Gord Mackintosh
Minister of Justice and
Attorney General
104 Legislative Bldg.
Winnipeg, MB R3C 0V8

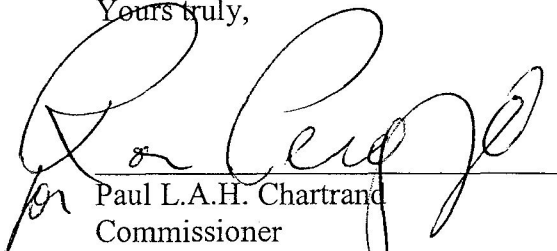
Honourable Eric Robinson
Minister of Aboriginal and
Northern Affairs
344 Legislative Bldg.
Winnipeg, MB R3C 0V8


Dear Minister Mackintosh and Minister Robinson:

Re: Third Quarterly Report

We are honoured to provide the third quarterly report of the Aboriginal Justice Implementation Commission. The report includes activities up to September 30, 2000

Yours truly,


Paul L.A.H. Chartrand
Commissioner


Wendy J. Whitecloud
Commissioner

Summary

This Report covers the period July 1, 2000 to September 30, 2000. In that period the Commission,

- Made a recommendation on probation services
- Continued its consultations
- Received and reviewed expert advice
- Contracted for expert advice in some priority areas
- Continued research in its priority areas
- Observed community justice programs in Nelson House and Oxford House
- Observed circuit court in St. Theresa Point

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1. Background

The Aboriginal Justice Implementation Commission was established by the Manitoba Government on November 29, 1999, to be:

“responsible for recommending priority areas for government action with respect to those areas for which the Manitoba Government is accountable and responsible; recommending practical, cost-effective and attainable implementation and funding strategies for the activities for priority action within existing Canadian law; reporting on the current status of implementation of the recommendations of the Aboriginal Justice Inquiry; and communicating and consulting with Manitobans in relation to the setting of priorities and development of implementation strategies”. (O/C 459, 1999)

The Commissioners are Wendy Whitecloud and Paul Chartrand. Elders are Eva McKay and Doris Young.

The Commission views its tasks as:

- Providing a report on the current status of implementation of the recommendations of the Aboriginal Justice Inquiry in the areas for which the Manitoba Government is responsible and accountable.
- Consulting with Manitobans on priority areas for action.
- Consulting with Manitobans on implementation strategies.
- Providing the Manitoba Government with recommendations on practical, cost-effective and attainable, implementation and funding strategies in the priority areas as those recommendations are developed.

In carrying out its work, the Commission is required to keep in mind the Framework Agreement, entered into between Canada and First Nations and the Reports of the Royal Commission on Aboriginal Peoples.

Further information on the Commission, including its terms of reference, first and second quarterly reports can be found at the Commission's website at www.ajic.mb.ca.

2. Activities

The Commission made a recommendation concerning probation services on September 20, 2000. That recommendation is attached as Schedule 1.

The Commission continued to work in the priority areas it had established through consultation with Manitobans. Those priority areas are:

Child Welfare
Equity Issues
Police
Community Justice
Early Support and Crime Prevention Measures for Youth
Violence towards Women and Children
Aboriginal Rights
Northern Flood Agreement
Treaty Land Entitlement
Métis Issues

Continuing Consultations:

During the last quarter the Commission or Commission staff met with the following organizations or persons:

- Aboriginal Justice Inquiry Commissioners, Associate Chief Judge Murray Sinclair and former Associate Chief Justice Alvin Hamilton
- Judge M. E. Turpel-Lafond, Saskatchewan Provincial Court
- Chief Jack Ewatski, Winnipeg Police Service
- RCMP Assistant Commissioner Tom Egglestone and staff
- Dr. Ben Levin, Deputy Minister of Education
- Tom Carson, Deputy Minister of Culture, Tourism and Recreation
- Mr. Greg Graceffo, Assistant Deputy Minister of Justice, Corrections Division
- Sandra DeLaRonde, Director, Aboriginal Courtworker Program
- Dr. Carol LaPrairie, Aboriginal Justice Researcher
- Pitama Group of Aboriginal Employees in Corrections Manitoba
- Pat Rowantree, Assistant Deputy Minister, Department of Education

Other Activities

Commissioner Chartrand and Commission staff visited the communities of Nelson House and Oxford House where they observed the MKO Northern Justice Strategy in action. In Nelson House the Commission observed community justice in the form of a sentencing circle. In Oxford House the Commission observed the early stages of a community justice program, both the effort required and the problems encountered in

setting up a program. The Commission also viewed the RCMP holding facility in Thompson and talked to staff on site. Commission staff observed circuit court in St. Theresa Point.

The Commission also continued its work in the following areas:

- Government institutions and Aboriginal policy design and implementation,
- Organization of a co-operative and effective Aboriginal Policy Framework in Manitoba, and
- The elements of a Métis Policy Framework.

3. Next Steps

Introduction

The Commission has six months remaining in its mandate, which ends on March 31, 2001. The Commission will focus the rest of its mandate on making recommendations, and accordingly it is useful to outline its intended approach. As part of its ongoing consultation program, the Commission welcomes and encourages comments on the views outlined below.

It is important to keep the extent of the Commission's mandate in mind as work progresses. The Commission has been asked to recommend priority areas for action that are within the control of the Manitoba Government. These recommendations must also be able to be implemented within existing Canadian law. While there is much work that can be done in areas that are within Manitoba's control, it is also important to note that it is the Federal Government that has assumed responsibility for funding the delivery of most services, such as health care, education, housing and other social services on First Nations communities. In addition, under the Canadian Constitution, it is Federal Government that is responsible for criminal law, specifically the Criminal Code and the Young Offenders Act.

It is also important to appreciate that the Commission has been asked to make recommendations on priorities. In this area, the Commission views its task as providing advice on how to spend limited funds from the Provincial Treasury. In other words, a dollar spent in one area is a dollar not available in another. The wise choice of priorities, is therefore, extremely important.

Demographics

In considering both priorities and substantive recommendations, it is useful to outline the demographics of the Aboriginal community in Manitoba. There are 128,685 persons who identified themselves as Aboriginal or Status Indian in the 1996 census out of a total Canadian Aboriginal population of 799,010. These numbers are thought to understate the number of Aboriginal people, which is estimated to be about 40% larger, as some First Nations did not participate in the census.

According to the census data, 11.7% of Manitoba's population identified itself as Aboriginal. Manitoba and Saskatchewan have more than double the percentage of Aboriginal population of any other province. 62.5% of the Aboriginal population of Manitoba live off reserve. The Aboriginal population is much younger than the general population. 37.4% of the Aboriginal population of Manitoba was between the ages of 0 – 14 as of 1996, versus approximately 21% of the non-Aboriginal population. Winnipeg has the largest Aboriginal population of any city of Canada at 45,750 followed by Edmonton at 32,825 and Vancouver at 31,140.

In general, the 1996 census shows Aboriginal people to be younger than the general population, to have lower participation rates in the labour force, over double the unemployment rate, lower education levels, and more frequent changes in dwellings. According to the Royal Commission on Aboriginal Peoples, Aboriginal people in general have poorer housing than the non-Aboriginal population.

Over-representation

The Commission in its June quarterly report commented on the increasing over-representing of Aboriginal people in prisons in Manitoba. The Commission asked the Corrections Division of Manitoba Justice to do a one-day snapshot of offenders in prison and on probation. The percentage of Aboriginal people in adult and youth prisons and on probation on September 6, 2000 was,

In Custody (Sentenced and Unsented)

Adult:	Male:	63.4	731 of 1153
	Female:	73.2	41 of 56
Youth:	Male:	77.3	201 of 260
	Female:	89.2	33 of 37

On Probation:

Adult:	Male:	41.5	2345 of 5652
	Female:	53.5	514 of 961
Youth:	Male:	47.2	702 of 1488
	Female:	60.9	270 of 444

As noted above, according to the 1996 census, the Aboriginal percentage of the total population of Manitoba was 11.7%. While this percentage may be understated, for the reasons noted, it can be seen that Aboriginal people form a far larger percentage of the inmate and probation population than they do of the general population of Manitoba.

Over-representation has been an issue debated for over 30 years and yet has progressively worsened. There have been task forces and inquiries in Manitoba, Alberta, and Saskatchewan that examined this issue. The Royal Commission on Aboriginal Peoples and the Law Reform Commission of Canada also addressed the issue. All of these reports noted that the problem would not be solved in the justice system alone. Long lasting solutions require addressing the circumstances of material disadvantage facing Aboriginal people compared to the rest of the population.

The Commission, through its consultation with Aboriginal people, government officials, outside experts and its own research has concluded that the solution to the over-representation of Aboriginal people in the justice system will come, over the long term, from within and without the justice system.

The Commission's Approach

A theme that has run through all of the Commission's consultations has been the advice, from Aboriginal people individually, Aboriginal organizations and non-Aboriginal people, to focus on children, youth and the family. This advice is supported by the Commission's research. The Commission referred to this theme in its second quarterly report but because of its importance, we return to it once again.

The Canadian National Crime Prevention Centre, after exhaustive research, prepared policy frameworks to address crime prevention for children aged 0 – 12 and youth aged 12 – 18. In the 0 – 12 framework, Dr. Richard Tremblay is quoted as stating,

"Preventive interventions over the first three years of life for at risk families clearly reduce the prevalence and the seriousness of behaviour problems. It appears clear that money invested in well-planned early prevention efforts with at-risk families will give greater payoffs than money invested in later preventive efforts with the same at-risk families."

-Dr. Richard Tremblay (1997) "Why Invest in Early Childhood Development?" Policy Framework for Addressing Crime and Children Aged 0 to 12, National Crime Prevention Centre, (p. 4)

The same document also notes that,

"Early intervention is one of the most effective ways of preventing problem behaviour from emerging. Community-based, universally available programs that support healthy early child development and the acquisition of pro-social behaviours are one avenue. Community-based programs that target families and communities with children who are at risk of developing problem behaviour are another.

There is a reasonable amount of evidence on which to focus crime prevention efforts concerning children in various settings. Community-based, prevention and early intervention approaches that are sensitive to the cultural, ethnic, linguistic and other key characteristics of families and communities, and to children's needs and abilities can yield significant benefits. This can include prevention measures such as prenatal care, at home support for parents of newborns and infants, infant cognitive stimulation and parent training to ensure that children get a healthy start. Early intervention measures such as school-based violence prevention and conflict resolution programs, as well as support and training for parents and teachers dealing with children who display disruptive or aggressive behaviour can help to reduce risk of subsequent conflict with the law. Support programs that help boys and girls who have been exposed to violence in the home also show promise. Programs that promote nurturing, safe and supportive environments – in families, schools and other institutions, and

communities – can have significant influence in fostering healthy child development, caring relationships, pro-social interest and engagement, and responsible behaviour.” (p. 4-5)

Elliot Curry, a noted American criminologist, commenting on the explosion of the size of the prison population in the United States and the disproportionate impact it has had on African Americans, comments:

“Given what we have learned about crime prevention in recent years, four priorities seem especially critical; preventing child abuse and neglect, enhancing children’s intellectual and social development, providing support and guidance to vulnerable adolescents, and working intensely with juvenile offenders...the first priority is to invest serious resources in the prevention of child abuse and neglect. The evidence is compelling that this is where much of the violent crime that plagues us begins, especially the kinds of violence we fear most.

(Elliot Curry, *Crime and Punishment in America*, New York; Metropolitan Press, 1998, p. 81 – 82.)

Adopting Curry’s analysis to make recommendations that would lesson the over-representation of African Americans in US prisons, other criminologists, William Lyons and Stuart Scheingold note that:

“Investing in non-criminal justice system programs that according to available criminological knowledge have crime prevention value... will reduce the need to resort to punitive crime control strategies that provide short term drama and serve political needs, but tend at the same time to weaken the communities that are most victimized by crime.

(Lyons and Scheingold, *The Politics of Crime and Punishment*, p. 133)

The Manitoba Government seems to agree. When announcing the Healthy Child Initiative the Minister of Family Services said:

“We know from research that children who grow up in safe, stable and nurturing environments have better outcomes throughout their lives, and that the earlier they have these experiences, the better the results.”

In the same announcement the Minister of Education emphasized that research shows that effective early childhood programs are a sound investment. He noted that these programs lead to enormous economic benefit such as improved graduation rates, decreased crime among youth and low reliance on social assistance. He said:

“It is costly and difficult to overcome the effects of a bad start. For example, each time a child is born with fetal alcohol syndrome or its less sever form, fetal

alcohol effect, the long-term social and economic costs are enormous. Studies show that there is at least a two-to-one payback in economic benefit if we invest in our children at an early age.”

Individuals and organizations that met with the Commission supported these conclusions. The Commission, as it moves forward to advise government on implementation priorities will lean toward recommendations that would:

1. Strengthen families.
2. Create conditions that lessen the likelihood of young people engaging in criminal and other anti-social behaviour.
3. Strengthen schools, including reducing truancy and school exclusion and creating family and school partnerships.
4. Strengthen communities, socially, economically and culturally.

While the Manitoba Government, in the current policy context, and Aboriginal service delivery organizations play a key role in this area in the off reserve delivery of services, it is the First Nations and Federal Government that will need to take the lead role on reserve.

Early intervention and crime prevention are important to help reduce involvement with the justice system. However, it is also important to ensure that the justice system is equitable in its treatment of Aboriginal people. It is also important, if the justice system is to be effective, that it enjoy the support and confidence of the people it is designed to serve. As it continues to consult, review and make recommendations on implementation of the Aboriginal Justice Inquiry recommendations, the Commission aims to focus on recommendations that would:

1. Reduce the use of incarceration and encourage correctional program service delivery in communities.
2. Use alternative or conditional sentences for as many offenders as possible.
3. Encourage support and confidence in the system through, more Aboriginal controlled service delivery such as police and probation services, more employment of Aboriginal people at all levels and greater understanding of the impact of the system on Aboriginal people through cross-cultural and other training.
4. Provide adequately resourced treatment programs for offenders and others.

5. Provide community policing that is rooted in genuine partnership among police officers, police departments, governments and the community.
6. Assist more community involvement, where communities want and have the capacity to assume and maintain justice roles and provide adequate resources for these communities to discharge their duties.

Conclusion

In summary, the Commission believes that, in order to reduce the number of Aboriginal people involved with the justice system,

- steps must be taken to improve the economic and social conditions of Aboriginal people,
- that children, youth and the family should be the focus of services and programs,
- that greater participation by Aboriginal people and Aboriginal communities, is required at all stages in the justice system, and
- that justice system personnel need to better understand the impact of normal system practices on Aboriginal people

The Commission intends to make recommendations in these areas in the coming months.

Schedule 1

Aboriginal Justice Implementation Commission**Recommendation on Probation Services**

The Aboriginal Justice Implementation Commission was established by Order-in-Council 459, November 24, 1999, to advise the government on methods of implementing recommendations of the Report of the Aboriginal Justice Inquiry (1991) for which the Province of Manitoba is responsible and accountable.

The Commission is to provide status reports and implementation recommendations on a quarterly basis but is also authorized to make any particular recommendations when appropriate.

The Recommendations of the Aboriginal Justice Inquiry dealing with probations were:

- ◆ Regional, Aboriginally controlled probation services be created to serve Aboriginal communities; and that Aboriginal people be employed by the Province as probation officers in numbers at least proportionate to their presence in the provincial population.
- ◆ All Aboriginal offenders be supervised by Aboriginal probation officers.
- ◆ Probation officers assigned to handle cases of Aboriginal persons be able to speak the language of the probationer.
- ◆ Conditions of probation orders be related directly to the circumstances of the offence and the offender, and be conditions that can be realistically adhered to by the probationer.
- ◆ There be a reorganization of the way community service orders are administered and supervised so that organizations are provided with the necessary resources to ensure that orders are fulfilled and that judges are provided with the necessary information to allow them to match offenders with programs.
- ◆ Cross-cultural training programs be mandatory for all non-Aboriginal probation staff, and that there be an ongoing series of refresher courses.
- ◆ When Aboriginal probation officers are not available to supervise Aboriginal offenders, judges make greater use of section 737(a) of the *Criminal Code*, which permits the court to place a person under the supervision of some "other person designated by the court".

- ◆ Courts seek out individuals in Aboriginal communities who are willing to accept the responsibility of supervising individuals placed on probation.

The Commission has been advised that Aboriginal organizations are interested in providing probation services to Aboriginal people and that the Government of Manitoba is also open to developing a process that would result in probation services for Aboriginal people being provided, primarily by Aboriginal probation officers.

The Commission agrees with the findings of the Aboriginal Justice Inquiry that for probation services to be effective they should be provided by individuals who are familiar with the community, understand the circumstances of the accused and have the resources and training needed to properly discharge their responsibilities. To this end, the Commission recommends that:

The Government of Manitoba consult with Aboriginal organizations with a view to creating regional, Aboriginal controlled probation services to serve Aboriginal communities, and

The Government of Manitoba seek to increase significantly the number of Aboriginal probation officers so that probation services to Aboriginal offenders are delivered primarily by Aboriginal probation officers.

The Commission has been advised and believes that enhanced Aboriginal participation in probation services will assist in implementing a community justice approach which can more effectively manage community sanctions for those offenders for which such sanctions are appropriate and assist in reintegrating offenders that have been incarcerated. This will also reduce the prospect of probationers offending again.

The Commission has also heard during its consultations, presentations that support the findings of the Aboriginal Justice Inquiry that it is important that probation orders be related directly to the circumstances of the offence and the offender, that conditions be such that they can be realistically adhered to by the probationer and that the personnel and resources be in place to properly supervise the probation order. The Commission believes that both of the above recommendations will assist these goals.

The Commission will continue its work in this area and may have further recommendations in the future.

