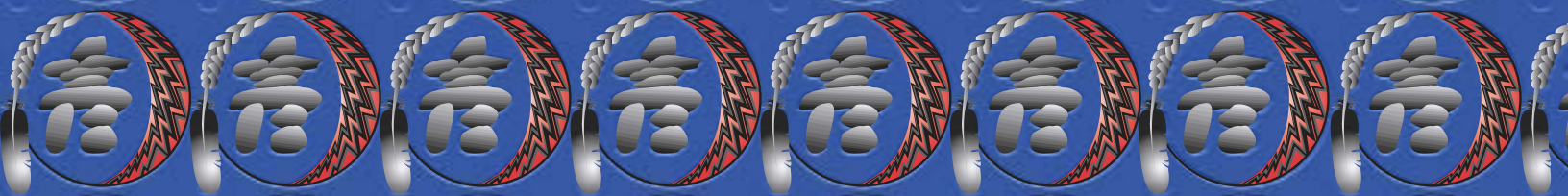


Aboriginal Sex Offending in Canada



The Aboriginal Healing Foundation Research Series

Aboriginal Sex Offending in Canada

Erratum

The description of the Bowden Institution's Aboriginal Healing Program contains an error on page 177. The report states:

History and Current Status of the Program:

This program in the federal penitentiary at Bowden, Alberta was initiated in September of 1996, but it no longer operates. It provided cognitive-behavioral therapy for groups of 12 Aboriginal and non-Aboriginal inmates.

The operators of this program advise that the Aboriginal Healing Program for First Nations sex offenders has been operational, since its inception in September 1996, without significant interruption. The operators also advise that they have an extremely low drop out rate.

Aboriginal Sexual Offending in Canada

Prepared for

The Aboriginal Healing Foundation

By

Dr. John H. Hylton

With the Assistance of:

Murray Bird
Nicole Eddy
Heather Sinclair
Heather Stenerson

2002

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Executive Summary

Sexual assault is a serious problem in Canada, but not everyone is at equal risk of being victimized. Most perpetrators are men, while most victims are women or children. Moreover, contrary to popular belief, most sexual offenders are family members, acquaintances, or friends of those they victimize. Risk of victimization also varies from community to community, among different segments of the same community, and within the same community over time. Remarkably, in 1999, there was a sixteen-fold difference in reported rates of sexual assault among provincial and territorial jurisdictions in Canada.

Like crime rates generally, reported sexual offences peaked in the early 1990s and have been declining since that time. Despite this downward trend, as many as 600,000 offences still occur in Canada each year. Although sexual offences make up only about 1% of official crime statistics, 90% or more of sexual crimes are never reported to the police. The under-reporting rate for sexual offences is higher than for any other crime category.

Sexual offences cause serious, often life-long, trauma to victims, families and communities. This is the case notwithstanding the fact that most offences do not involve any physical injury.

Over the past two decades, the justice system has been dealing more harshly with sex offenders. During this period, there has been a 400% increase in the number of sex offenders in jail. Despite increased enforcement, prosecution and imprisonment, however, it is estimated that only one in one hundred sex offenders is apprehended and sent to jail, and the proportion could be much smaller. Even those who are convicted of the most serious sexual crimes return to the community after an average sentence of about four years. Thus, the justice system impact on the problem of sexual abuse is, and likely will remain, quite limited.

Aboriginal people are over-represented in Canada's correctional systems. The many reasons for this have been well documented in numerous commissions and public inquiries that have examined Aboriginal justice issues over the past thirty years. Despite decreases in crime and incarceration rates generally, Aboriginal people continue to be incarcerated in disproportionate numbers, and they make up an ever increasing proportion of all those behind bars in Canada.

Between 20% and 25% of convicted sexual offenders in Canada are Aboriginal. As with non-Aboriginal offenders, those who have been convicted are the tip of a proverbial ice berg. While precise numbers are not available, there may be as many as 150,000 Aboriginal sex offenders in Canada. A small number of these offenders are responsible for committing many offences, sometimes over long periods.

Past attempts to reform the justice system to better address the needs and concerns of Aboriginal offenders, victims and communities have largely been unsuccessful. In particular, it is not at all clear that traditional penal sanctions have had any deterrent or rehabilitative effects on the majority of Aboriginal offenders, and the justice system has also often failed to address either the needs of Aboriginal victims or the aspirations of Aboriginal communities.

It is apparent that the most promising initiatives to improve access to effective, culturally appropriate services are those that are undertaken by Aboriginal communities themselves. These initiatives recognize and respect the Aboriginal right of self-determination, and they provide opportunities and resources for Aboriginal communities to design and implement their own solutions.

Canada is a world leader in the relatively new field of sex offender treatment. Yet, there are few programs, and little information is available about their effectiveness. Although Aboriginal sex offenders are known to be much more disadvantaged than other offenders, and while the numbers being processed through the justice system have grown, there are surprisingly few specialized treatment resources of any kind available anywhere in Canada. The number of programs that incorporate any sort of culturally appropriate programming are rarer still. As a result, most Aboriginal sex offenders return to their communities without receiving any treatment, much less any culturally appropriate treatment.

While the scarcity of Aboriginal-specific treatment programs is a serious concern, it is also clear that the most meaningful strategies for addressing Aboriginal sexual offending lie beyond the justice system. In fact, even intensified efforts to incapacitate, deter or rehabilitate Aboriginal sex offenders will likely have little appreciable impact on victimization rates. Rather, there is a need to invest in community-based solutions, including early intervention programs, crime prevention programs, and restorative justice programs.

Meaningful, long-term strategies to address Aboriginal sexual offending will require the coordinated efforts of many partners. Communities must become more informed, but they must also be provided with the resources that will allow them to take ownership of the problem. Investments in strengthening the family and community are also key. In addition, there must be a heightened commitment to develop adequate and appropriate programs for offenders and victims.

There is an urgent need for research to more fully determine the extent of offending and victimization, and program development to provide effective solutions. And there is a critical need to develop Aboriginal human resources to deal with these and related needs in Aboriginal communities throughout Canada.

In many Aboriginal communities, it is only in the last 5-7 years that there has been any open discussion about the problem of sexual abuse. The main challenges still often involve moving beyond myths and denial. Yet the problems are serious. If Aboriginal communities and nations are to achieve their vision for the future, these problems must be addressed.

Acknowledgments

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Any remaining errors or omissions are my responsibility alone, and the views expressed do not necessarily reflect the positions of the Aboriginal Healing Foundation or any other Organization.

John H. Hylton
Regina, Saskatchewan
May 2001

Chapter 1

Sexual Abuse and the Legacy of Residential Schools

This report is about Aboriginal sexual offending in Canada. The incidence of Aboriginal sexual offending is examined, trends over recent years are reviewed, current prevention, treatment, rehabilitation and healing approaches are analyzed, and gaps in current services are enumerated. In the final chapter, we present a strategic framework for addressing Aboriginal sexual offending in Canada.

At the outset, we wish to locate current issues about Aboriginal sexual offending in their proper historical context. For this reason, we take the opportunity in this introductory chapter to discuss sexuality in traditional Aboriginal societies, as well as the impact that colonization had on age-old Aboriginal practices and beliefs. We believe the disruption of traditional beliefs and practices, including the harm brought about by residential schools, has in no small part been responsible for creating the social, economic and political conditions that account for high levels of sexual abuse in many Aboriginal communities today.

In this chapter, we also discuss sexual abuse generally. As will be seen later in our review, sexual offending is a subset of a much larger category of sexually abusive behaviors. Before focusing on the behaviors that become the object of justice system attention, we discuss a number of the broader issues.

Sexual Abuse

Sexual abuse or sexual assault can be defined as the use or attempted use of another person's body for sexual gratification, without that person's consent. Sexual abuse encompasses a range of behaviors from kissing and fondling at one end of the continuum, to attempted or actual sexual intercourse at the other. Sexual abuse usually involves force, emotional or physical threats, the use or abuse of alcohol or drugs (by the perpetrator, the victim, or both), and rendering a victim physically helpless in some way. Typically, the victim of abuse is a woman or a child, although men are sometimes also victims. Men are almost always the perpetrators, although there are indications that some women and young people also sexually abuse others. Contrary to popular belief, perpetrators are almost always friends, family members or acquaintances who are known to the victim.

Sexual abuse usually has serious, traumatizing effects on victims. Much of the literature on sexual abuse deals with these effects, and focuses on ways of helping victims become survivors. However, in recent years, there has also been an increasing recognition of the treatment and other needs of those who perpetrate sexual assaults.

There are two main forms of sexual assault: rape and child sexual abuse. These categories are not mutually exclusive. In this section, we explore the definitions of these acts and the history of society's attempts to deal with them.

1. Rape

At first, defining rape may seem to be rather straightforward, but it is a very difficult task. A simplistic view might hold that rape is forced or non-consensual sexual intercourse. However, experts generally agree that rape also includes other forced sexual acts (i.e. oral or anal sex), and also extends to being forced to take part in unwanted sexual activity, including the production of pornography.

Rape has often been considered as a crime perpetrated on a woman by a stranger. Therefore, women have often been warned that they should be careful about where they walk, about going out alone at night, and about wearing clothing that might be seen as provocative by a potential assailant. However, in recent years, it has been recognized that the two most common types of rape, date rape and marital rape, do not conform to these stereotypes. In both these types of rape, the victim not only knows the perpetrator, but may have an on-going and intimate relationship with him.

Date rape, as the name implies, refers to a sexual assault that takes place within the context of a dating relationship. An assault may occur on a first date with someone a woman has just met, or it may occur later in the dating relationship. Some studies suggest date rape occurs at epidemic levels in modern society.

Marital rape is one of the least discussed types of rape among researchers because, in many jurisdictions, there is no legal prohibition against it. This was true in Canada up until 1983. Changes in the law in that year recognized marital rape as a criminal act.

Marital rape is defined as a sexual assault taking place within the context of a marriage or common-law relationship. As in the case of date rape, the assault may occur early in a relationship or at some later point. Sexual assaults also occur during a period of separation or after a divorce.

2. Child Sexual Abuse

While rape is the most common form of sexual assault, there is a second important type: child sexual abuse. While there are no clear, universal definitions, this type of abuse usually refers to incidents where children are used by an adolescent or adult for sexual gratification. A child may be exposed to, invited, or forced to participate in a wide variety of sexual activities or behaviors. Sometimes the abuse involves a single assault, however, in many other instances, it takes the form of ongoing sexual exploitation. Children are, of course, unable to give their informed consent to these activities and behaviors. Like rape, this type of abuse may have life-long consequences for both physical and mental health.

The most common forms of child sexual abuse in Canada involve fondling children and inviting them to touch the abuser, another person, or themselves in a sexual manner. However, child sexual abuse may progress to sexual intercourse with a child, child prostitution, and child pornography. Some experts prefer to classify sexual intercourse with a child as “child rape”(Hollin & Howells 1991).

Just as there are no “typical” victims of rape, there are no typical victims of child sexual abuse. Children of all socioeconomic groups, races, religions, ages and genders may become victims of child sexual abuse. However, some children are at greater risk, for example, those who have physical or intellectual

disabilities, as well as those who live in unusual circumstances, such as in foster care.

Child sexual abuse of very young children and even newborns has been documented, but sexual abuse usually begins when children are between the ages of four and eight (McEvoy 1990). A national study conducted in Canada, for example, found that children between the ages of seven and eleven were most at-risk, while thirteen to sixteen year old males and females were also at greater risk (Badgley 1984).

The child sexual abuser is most often a male who is a family member, friend or acquaintance of the victim. Sometimes, the abuser is a trusted adult in a position of authority, such as a teacher or minister. As with rape, strangers are not responsible for most of the abuse. In fact, children are even less likely than adults to be victimized by a stranger.

Child sexual abusers are typically classified as either pedophiles or incest abusers. A pedophile is a person who is sexually excited by children, usually children of a specific age or gender. Pedophiles may frequent activities or places where children are known to congregate. They may use this contact to “groom” potential victims. Research indicates that some pedophiles abuse many children (McEvoy 1990).

The incest abuser sexually abuses someone within his own family - his children, his stepchildren, or members of his extended family. Within the community, the incest abuser may appear to be meek and mild, but within his own home, he often maintains strict control. The abuse is generally a way in which he seeks love and power. Unlike the pedophile, most experts believe the incest abuser tends to abuse a small number of children, but often over an extended period. The incest abuser may also be involved in sexual relationships with age and gender appropriate partners (McEvoy 1990).

There has been a long-standing belief among researchers that incest and non-incest abusers represent distinct types of offenders. However, preliminary research conducted by Abel in 1988, indicated that 49% of incest abusers also abused children outside of the family, while 18% had raped adult women (Hollin & Howells 1991). These findings challenge conventional beliefs that incest and non-incest abusers are different, and they also raise questions about the extent of the overlap among those who commit child sexual abuse and rape.

3. Historical Perspectives

Sexual abuse of women and children has existed throughout the ages; it is a feature of almost all known societies. In fact, the Old Testament describes both incestuous and non-incestuous sexual assaults involving women and children.

Most cultures have taboos against sexual abuse. These taboos seldom protect women, children and some men from being victimized, but they do contribute to the shame, guilt, secrecy and denial that often surround sexual assault. In part, this allows sexual abuse to continue.

So-called “rape-free” societies have been documented. In these societies, rape either does not occur or is very rare (Odem & Clay-Warner 1998). Researchers believe that what distinguishes these societies

from others is the great respect and prestige that they attach to women's roles. Interestingly, in these societies, there is little interpersonal violence of any kind, and the natural environment is also treated with great respect.

"Rape-prone" societies have also been documented. Within these societies, rape occurs at a high rate. In some of these societies, rape is elevated to a ceremonial act, or it is routinely used by men to threaten or punish women (Odem & Clay-Warner 1998). These societies are noted for a significant power imbalance between men and women. Cultural beliefs in these societies place men in a dominant position that allows them to control women and children as they see fit.

Contemporary beliefs about rape and child sexual abuse are far different than the predominant beliefs of centuries past. During the colonial period, for example, women were valued for their ability to bear children (Odem & Clay-Warner 1998). Purity, or at least perceived purity, affected a woman's ability to attract a suitable spouse. If a woman was raped, she was no longer considered pure. This diminished her chances of marrying into a respectable family and increased the likelihood she would be a financial burden on her father.

The rapes most likely to be reported to the authorities during this period were those that involved victims from a higher socioeconomic status and strangers from a lower socioeconomic status. Over time, a rape stereotype evolved; it referred to an act of violence perpetrated by a stranger of a different race against a woman of a higher class. This myth of the "stranger rape" has prevented society from effectively addressing the issue of sexual assault.

In the seventeenth century, the British jurist Matthew Hale proclaimed that women were chattels of their male owners (Thorne-Finch 1992). The act of marriage was deemed to "transfer" the ownership of a woman from her father to her husband. It was also deemed that this transfer of ownership allowed a man to rape his wife without legal repercussions. In colonized countries, as well as in others, this perspective on marriage influenced the legal treatment of marital assault and rape for the next two hundred years.

An appropriate societal response to sexual assault has also been undermined by the various ways in which the legal system has further victimized women and children who have been sexually assaulted. In the past, women and children have been discouraged from reporting sexual assaults because of fear and guilt. However, rules of evidence that allowed a woman's sexual past to be scrutinized, also discouraged many women from coming forward. Victims of rape, even within recent history, have sometimes been portrayed as sexually promiscuous women who enticed a rapist into a sexual encounter. It is even suggested that some victims derived enjoyment from sexual assault.

Fortunately, these attitudes have begun to change. Canada has been at the forefront of legal reforms to prevent wife abuse, including marital rape. In 1983, changes to the Criminal Code made it possible for a spouse or former spouse to be charged and convicted of sexual assault. As well, except in strictly circumscribed situations, new laws now prohibit a woman's sexual history from being used by the defence in a sexual assault trial.

Other barriers to reporting remain. Many women are still hesitant to report rape out of fear that further violence will be committed against them. This is particularly true in the case of marital rape, because other forms of abuse often accompany it. For example, it has been estimated that between eighteen and forty-one percent of women who are raped by their husbands are also battered wives (Thorne-Finch 1992).

Like rape, child sexual abuse is not only a modern phenomenon, it also has long historical roots. Child sexual abuse was first recognized as a criminal offense in the sixteenth century in England. By the 1700s, some American educators were providing parents with suggestions on how to protect their children from sexual abuse. By the 1900s in North America, it was believed that the most common form of child sexual abuse was incest. However, by the 1920s, child sexual abuse had come to be characterized as mostly non-incestuous.

The societal response to child sexual abuse has been influenced by many of the societal norms and practices that have already been discussed. Like women, children were often viewed as property, without any rights. A “blaming the victim” approach was also common. For example, young children were sometimes characterized as “temptresses” who lured strangers into sexual encounters. These myths prevented society from recognizing and dealing with the problem appropriately.

It has been suggested that incest posed too great a threat to post-industrial society to be openly acknowledged and dealt with (Tomison 1995). Responding to the issue would have required imposing laws and standards on what were then viewed to be “private” family matters. As a result, for many generations, society turned a blind eye to the issue; it was simply too explosive and too threatening to the predominant beliefs and values. During this period, a type of “don’t ask, don’t tell” atmosphere often prevailed.

Many scholars believe that increased awareness of rape and child sexual abuse in recent decades is the direct result of the women’s movement. These experts argue that the women’s movement created shifts in societal thinking and values that focused attention on the exploitation of women and children. Experts believe that as women gained their voices and freedom from male domination, they were better able to speak out and take action against exploitation and abuse.

The concept of the “battered child syndrome,” first introduced by Kempe and his associates in the 1960s, has also been linked to increased awareness of child sexual abuse (Tomison 1995). In this syndrome, children who are physically, emotionally or sexually abused or neglected are thought to be at a higher risk of abusing others when they are adults.

Ritual abuse, which has been linked to cults and satanic practices, first came to the public’s attention in the 1980s. Ritual abuse is characterized by the repetitive and systematic sexual, physical, psychological and spiritual abuse of children (Health Canada 1993). Initially, many professionals did not believe in the concept of ritual abuse because of a lack of concrete evidence. It is now known that ritual abuse is much more prevalent than originally believed, and that it is among the most damaging forms of child sexual abuse (Health Canada 1993).

Child prostitution has always been included within the definition of child sexual abuse. However, recent developments in understanding the magnitude of child prostitution have increased societal pressures to deal with the issue. Attention has also been focused on the fact that, particularly in many Western cities, most child prostitutes are Aboriginal and some are barely teenagers (e.g. Alliance of Five Research Centers 2000).

Canada is regarded as a leader in dealing with child sexual abuse. The province of Ontario introduced child protection legislation in 1965. British Columbia followed in 1967, as did Nova Scotia (1968), Newfoundland (1989) and Alberta (1970). Today, there is child welfare legislation in all provinces and territories. This legislation requires the reporting of any type of child abuse, including child sexual abuse (Health Canada 1997). In addition, as will be discussed more fully in the next chapter, various forms of child sexual abuse are now explicitly prohibited in Canada's *Criminal Code*.

Sexuality and Sexual Expression in Traditional Aboriginal Societies

Thus far, the focus of the discussion has been on rape and child sexual abuse within Canada generally. In the brief review provided in the previous section, we have attempted to show that incidence, reporting trends, and societal responses have all been shaped by the dominant beliefs and values about the role of women and children at different times in history. But Aboriginal societies had quite different beliefs, values and traditions and, as a consequence, their experience with rape and child sexual abuse was also quite different. In this section, we discuss sexuality and sexual expression in traditional Aboriginal societies. In the next section, we analyze the dimensions and consequences of the calamity that occurred when Western and Aboriginal systems of thought and action collided during the period of colonization.

1. Aboriginal Views Of Sexuality¹

Aboriginal peoples, whether First Nations, Métis or Inuit, have witnessed high levels of violence and sexual abuse within their communities for many decades. Aboriginal women and Aboriginal children have been particularly affected (Nightingale 1994). But as La Rocque (1994) has pointed out, men of all backgrounds, cultures, classes and economic circumstances have assaulted women; sexual violence appears to be a global and universal phenomena.

Most cultures have mechanisms in place to minimize the extent of sexual abuse. Usually, mores and customs provide guidance about the range of acceptable interactions between the sexes, as well as protection for those who are vulnerable. Such mores and customs also prescribe the punishments for violations of accepted standards of behavior. Traditional Aboriginal societies were not unlike many other cultures in this regard. Specific mores and traditions set out standards for sexual expression within varied cultural frameworks.

In the traditional Aboriginal view, sexuality was typically viewed as the force of life within each individual. At the core of the creation process, sexual energy was regarded as the energy of life longing for itself. Love was seen as the attractive force that held together the very elements and particles that made up the universe.

Sexuality was considered a powerful and sacred force, one that was to be respected. Young men and women were taught to have deep respect for the power that flowed through them (Bopp & Bopp 1997a; 1997b). This perspective encouraged Aboriginal people to respect themselves and others.

Many North American Aboriginal tribes had behavioral norms which “promoted positive interpersonal relations by discouraging coercion of any kind, be it physical, verbal, or psychological” (Brant 1990; p. 1). These behavioral norms have been referred to as an “ethic of non-interference.” This ethic has been identified as one of the most widely accepted principles of behavior in Aboriginal cultures. Throughout history, this ethic contributed to the maintenance of harmonious relations and was highly effective in suppressing intragroup and intergroup hostility. Brant (1990) has also shown that Aboriginal societies had complex and effective strategies, such as teasing, shaming and ridiculing, for reinforcing and promoting such cultural norms.

Aboriginal societies educated children about sexuality. This education sought to achieve a balance between two fundamental attitudes; that sexuality was a natural part of life but, also, that there must be boundaries and limits (Bopp & Bopp 1997a: 1997b). Thus, it was considered natural for young people to want to explore their sexuality, but it was usually not considered appropriate for unmarried men and women to have sex before they were married. Within these traditions, the guiding principles of each culture maintained the “sacredness” of sexuality.

As in all cultures, violations of community standards did occur in traditional Aboriginal societies. LaRocque (1994) notes that there is evidence that violence against women did occur in Aboriginal societies prior to European contact. She also points out that legends told of male violence against women. As Aboriginal experts have pointed out, to deny that violence and sexual abuse were problems in traditional Aboriginal societies would only serve to perpetuate distorted and romanticized images (Supernault 1993). At the same time, there is no evidence that the nature or extent of sexual abuse within traditional Aboriginal communities resembled, even in the most remote way, the problems that exist today.

In Aboriginal societies, the onus of control to observe appropriate boundaries was, in the first instance, on each individual. Boundaries were learned, beginning early in life, and they provided guidance about how to think and act in the sexual area of life. Aboriginal communities also had a range of specific taboos, warnings, proverbs and prescribed protocols that served to teach community members how to behave, and what to avoid with respect to sexuality and gender relations. Individuals, families and communities continuously taught and reinforced these rules and boundaries, and the historical record indicates that these methods were highly effective in maintaining community standards (Bopp & Bopp 1997a: 1997b).

The Aboriginal perspective on sexual abuse holds that the abuser is unhealthy and has lost touch with spiritual and cultural roots and teachings. While abuse is seen as a serious threat to the victim’s well being, the community’s well-being is also affected. Abuse is seen as interfering with the victim’s development, but it is also seen as undermining traditional cultural and social dynamics within families and communities.

The Aboriginal concept of justice is closely tied to the notion of restoring community harmony. This approach is based on a belief in the interconnectedness of all aspects of life (Bopp and Bopp 1997a: 1997b). Hence, in the traditional way, the victim, the abuser and the community all have an important role to play in resolving the dispute and healing the wounds. The goal is to restore social harmony. These approaches were used in addressing violations of community standards related to sexual behavior as they were in many other areas of community life.

2. Sexual Abuse and Violence: The Context of Aboriginal History

The history of sexual violence in Aboriginal societies is incomplete, but there is a general consensus among experts that European contact helped to undermine traditional values and practices in Aboriginal communities, such as those related to justice, equity, and respect. One outcome of contact, perhaps the most devastating, was the breaking down of traditional norms, standards, and enforcement mechanisms within Aboriginal communities. Experts believe this created conditions that allowed the incidence of sexual abuse and violence to grow unchecked, since the resources available within the community to deal with the abuse were greatly diminished.

The undermining of traditional Aboriginal practices and beliefs, particularly through the establishment of reserves and residential schools, left many communities without even a basic way of teaching community members about healthy living (Ellerby and Ellerby 1998). The result was often a lack of proper sexual education. Providing healthy role models was also an important educational tool, but this also became difficult as community cohesiveness began to deteriorate. Thus, many experts have concluded that the colonizing process that began hundreds of years ago is a root cause of many problems in Aboriginal communities today.

This perspective is exemplified in the findings of the Aboriginal Family Healing Joint Steering Committee (1993; p. 10). This committee sees family violence as a consequence of:

the learned negative, cumulative, multigenerational actions, values, beliefs, attitudes and behavioral patterns . . . (that have resulted from) colonization, forced assimilation, (and) cultural genocide.

In the view of the Committee, these forces have weakened and destroyed the harmony and well-being of Aboriginal individuals, families, extended families, communities and nations.

Standards of behavior have changed so drastically in some Aboriginal communities that family violence and sexual abuse are now sometimes regarded as a part of everyday life. In 1985, for example, a Northwest Territories task force on spousal assault found that “a surprising number of victims were unaware that being beaten was not a normal part of life” (Supernault 1993; p. 14). This represents a marked change in attitudes and expectations from those that prevailed in traditional Aboriginal societies.

In a study of sexual abuse in Inuit communities, Kuptana (1991) also discusses a most disturbing finding; the existence of the myth that child sexual abuse was or is acceptable in the Inuit culture. While Inuit organizations and leaders believe that child sexual abuse is totally unacceptable, Kuptana points out instances where the justice system has made statements which lead people to believe that

child sexual abuse is commonplace in Inuit culture. She suggests that the courts have, at times, accepted interpretations of traditional Inuit values and attitudes which have perpetuated this myth. She points out that in Inuit traditions, Inuit believed that children should be children until they were ready to take on responsible roles as providers of life. These responsibilities included learning to hunt, to cook, to sew, to build snow houses, to train a dog team, to learn the arts of oral traditions, dances, and songs, to learn to parent, to live in harmony with fellow Inuit, to share, to survive, to cooperate, and to contribute to the well-being of the community. She points out the need for the traditional Inuit values of respect and the value of children to be reaffirmed.

In their review, Bopp and Bopp (1997a; p. 40-41) contrast some traditional beliefs, values and practices with those that exist in some Aboriginal communities today. In many traditional Aboriginal societies, the following boundaries were common:

- No sex between adults and children;
- Unmarried men and women must wait to have sex until they are married;
- Once married, a couple must remain faithful to each other. They must not have sex with other people;
- It is wrong and harmful to have sex with someone else's spouse;
- It was taught that these rules protected the people from many evils, including various kinds of disease, disunity, jealousy, broken families, and wounded hearts and spirits;
- It was also taught that the boundaries were taught to the people in a sacred manner, and that the deeper reason for honoring these teachings came from a profound reverence for life itself.

Today, many people have gradually come to accept the following attitudes and behaviors as “the way it is:”

- young people having sexual intercourse regularly even as early as the age of 12 or younger;
- promiscuity (i.e., people having sex with many different partners);
- having sex as a recreational activity;
- gang bangs (a group of males having sex with one female in quick succession);
- rape (forcing sex on someone);
- adult-child sexual intercourse, fondling or other interactions;
- sex used as a bargaining chip to get what you want (either by withholding sex or offering it);

- disconnection between sexual relations and the responsibility for resulting children; and
- sexual acts between humans and animals

It has been noted that the current imbalance in some Indian, Métis and Inuit communities centers around the distress experienced by the Aboriginal family. The Royal Commission on Aboriginal Peoples (1996), for example, has observed that there was a clear division along sex lines in most Aboriginal societies. Roles complimented one another and contributed to the well being of the family and community. Survival depended upon an equal balance and respect for the roles of both men and women (Patterson 1982). For example, Objibwa women were essential economic partners in the annual cycle of work. Their skills were not only used for the performance of domestic chores but also for the construction of hunting tools (Royal Commission on Aboriginal Peoples 1996). Métis families similarly divided responsibilities between men and women. One report, for example, tells of the men doing the hunting, while the women did all the tanning of the buffalo hides, jerky meat making, pemmican and moccasins (Royal Commission on Aboriginal Peoples 1996). Similarly, mutual dependency and respect was the norm in Inuit culture.

However, colonization perpetuated both racism and sexism. The internalization of these beliefs has been a significant force in shaping present circumstances.

Prior to European contact, Aboriginal women enjoyed comparative “honor, equality and even political power in a way European women did not at the same time in history” (LaRocque 1994; p. 73). With the imposition of European patriarchy on Aboriginal societies, the status of Aboriginal women slowly diminished. Sexism and racism combined to deal a double blow to the status of Aboriginal women, making them more vulnerable to exploitation and abuse. Later, “legislation, government policies and judicial decisions formed a regime which discriminated against all Aboriginal people, but affect(ed) Aboriginal women in many unique ways” (Nightingale 1994). In short, European interference helped undermine the place of Aboriginal women and their centrality to the strength of Aboriginal nations.

Residential Schools

Much has been written about residential schools, and more and more information is becoming available all the time². In part, the interest is due to the fact that there are some 10,000 law suits relating to residential schooling that are currently wending their way through the court system. In addition, however, a number of organizations, including the Royal Commission on Aboriginal Peoples and the Aboriginal Healing Foundation, have made it a priority to carry out research and disseminate information about the residential school legacy.

Our purpose here is not to summarize the literature on residential schools. Nor do we seek to contribute any new knowledge about the history of residential schools. Rather, our intent is much more focused; we wish to point out that sexual abuse, like some other issues facing Aboriginal communities today, is properly understood, at least in part, as emanating from the residential school legacy.

1. Residential Schools: A Brief History

Although Aboriginal cultures are quite varied, there were common approaches to education in many Aboriginal cultures prior to European contact. These elements included: 1) the use of storytelling and examples as the main method of teaching, 2) the involvement of Elders, 3) and the embedding of education in the traditions of each culture (Kennedy 1970; Grant 1996; Haig-Brown 1989; Miller 1996). It was a system based on respect, sharing, caring, healing, and a willingness to help others (Grant 1996; p. 22). Men and women understood that as they grew in spirit and wisdom, they had a duty to teach and maintain the well-being and continuity of the community.

Historical records are filled with references to effective Aboriginal educational systems. In her study of the Plains Cree, for example, Kennedy (1970; p. 15) refers to an approach to education where “the social group as a whole was the school of every growing mind.” In her description of the Shuswap’s traditional educational system, Haig-Brown (1989; p. 42) notes: “always there were lessons to be learned. Some came wrapped in legends, some came as encouragement to attempt a task, and some as cultural necessities developed through centuries of interaction with other Shuswap people.”

Euro-based educational approaches, in contrast, were deliberately designed to undermine the language, culture and traditional ways of Aboriginal peoples. Both the methods used and the content were foreign. Education amounted to directed and forced acculturation (Barman, Herbert & McCaskill 1987). As the Royal Commission (1996, Vol 1; p. 333) has noted:

In the first few decades of the life of the new Canadian nation, when the government turned to address the constitutional responsibility for Indians and their lands . . . it adopted a policy of assimilation . . . It was a policy designed to move communities, and eventually all Aboriginal peoples, from their helpless ‘savage’ state to one of self-reliant ‘civilization’ and thus to make in Canada but one community — a non-Aboriginal, Christian one.

Education was the key tool used by Canadian governments and missionary churches to undermine traditional Aboriginal culture and to promote the values and practices of the dominant European society, values and practices that were often directly at odds with the goals and ideals of Aboriginal nations (Kennedy 1970; Furniss 1992; Elgie 1947).

As far back as the 1600s, churches had initiated some informal methods of schooling for Aboriginal children (Haig-Brown 1989; Buckley 1992; Milloy 1999). These early attempts were largely “sporadic and short-lived” (Wilson 1986). During this period, children were not confined in residential schools, nor were they forced to participate in educational programs. The full onset of the residential school system did not come until much later.

The development of the residential school system was inextricably linked to the economic and social changes that transformed the vast lands of Canada during the last half of the nineteenth century (Dyck 1997; Milloy 1999). In the Prairie West, the advancement of Europeans undermined the Aboriginal hunting and fur economies, and transformed them to meet the needs of the Europeans (Barman, Herbert & McCaskill 1987). This was exemplified in the establishment of settlements, territorial boundaries, and provinces.

The reserve system was also established during this period. The hoped-for future driving these developments:

was one of settlement, agriculture, manufacturing, lawfulness and Christianity...Aboriginal knowledge and skills were neither necessary nor desirable in a land that was to be dominated by European Industry and, therefore, Europeans and their culture (Milloy 1999; p. 4-5).

In keeping with this European vision for Canada, political leaders and missionaries worked towards a national goal: “To do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the Dominion, as speedily as they are fit to change” (Milloy 1999; p. 6). In 1867, under the reign of Sir John A. McDonald, the schooling of Aboriginal children came under colonial control (Miller 1996). In 1876, this control was further consolidated and centralized in the Indian Act (Titley 1986a).

The underlying tenets of the residential school system evolved from recommendations made in the 1879 Davin report on industrial schooling of Indian children in the United States (Satzewich & Mahood 1995). Davin was commissioned by the Canadian government to evaluate this system and, on the basis of his recommendations, the government actively pursued a policy of augmenting its already existing system of day schools with boarding and industrial schools.

The residential school system was founded and operated on the basis of a church-state partnership. Davin’s recommendations helped solidify this partnership. He recommended that “boarding and industrial schools be operated as much as possible by missionaries, subject to federal government regulation and regular inspection” (Satzewich and Wotherspoon 2000; p. 120). The government’s role in this partnership was to provide core funding, supervise the administration of the schools, and set the standards of care (Milloy, 1999). However, as predicted by some government officials at the time, the churches gradually gained increasing control. This included taking over many of the roles originally envisioned for government, except for core funding.

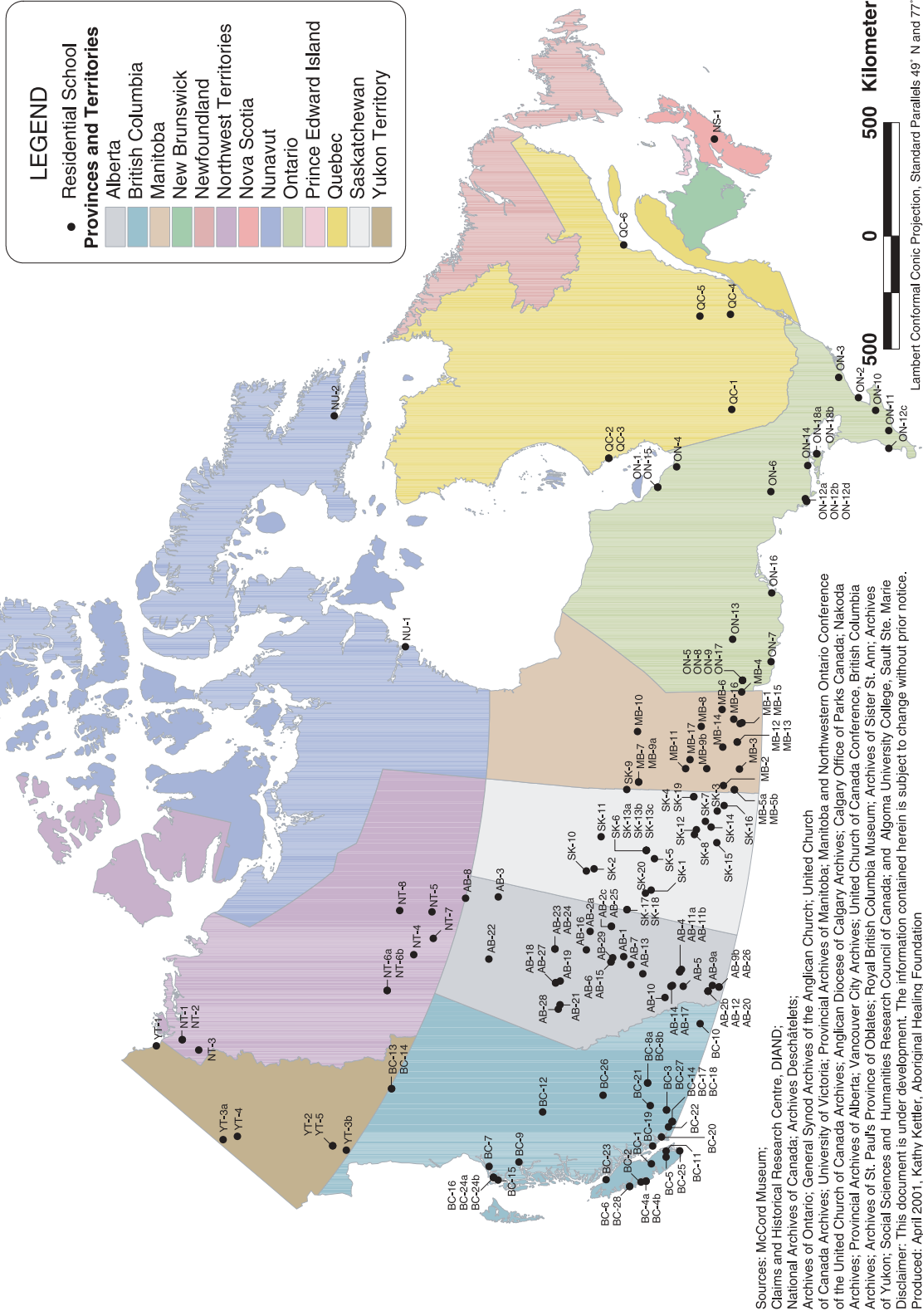
The term “residential school” has been used as an all inclusive term that refers to both: 1) industrial schools, which were schools located further away from Aboriginal communities and were intended for older children between the ages of fourteen to seventeen, and 2) boarding schools, which were located closer to Aboriginal communities and intended for younger children (Miller 1996). By the 1920s, both types of schools were referred to as residential schools in official government correspondence, and this usage has continued until today (Miller 1996).

Residential schools were located in every province and territory, except for New Brunswick, Prince Edward Island and Newfoundland (see attached map). The first schools were opened in the 1840s in Upper Canada (Ontario). In Western Canada, they first appeared in Saskatchewan, starting in 1883, primarily in the regions of Qu’Appelle, High River and the Battlefords.

While developments in British Columbia began somewhat later, eventually, this province would become the home to more residential schools than any other.

There was a gradual increase in the number of Aboriginal children attending residential schools between the early 1900s and about 1940. In the early 1900s, it has been estimated that one in six First

Residential Schools



Nation's children attended residential schools. By the 1940s, approximately one half of First Nation's children attended such schools. In 1931, there were 80 schools, and the numbers were still growing as a result of post-war expansion into Inuit homelands (Royal Commission 1996). Although, residential schools were mostly established for First Nations children, some Métis and Inuit children also attended (Milloy 1999).

By the 1960s, the numbers began to drop. Between 1960 and 1980, only about 3% of Aboriginal children were enrolled in residential schools (Satzewich and Wotherspoon 2000; Miller 1996). The schools were gradually phased out, with the last ones closing during the 1980s. During this period, educational systems under Aboriginal control were established in many Aboriginal communities (Calliou 1999).

Precise information about the number of residential school attendees is not available. The United Church of Canada has estimated that approximately 100,000 children attended residential schools over the years they operated. However, an analysis of data from the Aboriginal Peoples Survey conducted by Statistics Canada in 1991, suggests there may be as many as 100,000 residential school attendees alive today (Bevan 2001).³

Residential schools were places where “a large number of people lived and worked together, cut off from both the wider First Nations and mainstream societies” (Assembly of First Nations 1994; p. 3). Children attending these schools were not only separated from their families for lengthy periods of time, but from their communities as well. The average length of stay for a child was ten months each year (Ing 1991). Many residential schools had a ridged work schedule, limited time for socialization, and rules requiring strict adherence to the teachers' guidance (Coates 1984). The use of corporal punishment was widespread.

The main goals of the residential school program were to christianize, assimilate and transform the child's way of life so that it approximated European standards as closely as possible (Buckley 1992). There was no expectation that the education of Aboriginal children would go beyond what was necessary to achieve these goals. “It was decided that Indians would go to school, but it was never thought they would be educated”(McDonald 1995).

Gender roles of Aboriginal children were defined according to the social and economic needs of the Europeans. For example, boys were taught to become farm hands, while girls were taught to be in subservient domestic position (Miller 1996; Grant 1996). The schools, George Emanuel has written:

were the laboratory and production line of the colonial system . . . the colonial system that was designed to make room for European expansion into a vast empty wilderness needed an Indian population that it could describe as lazy and shiftless...the colonial system required such an Indian for casual labour (Royal Commission 1996, Vol 3: p. 335).

Teachers were mainly hired by the churches that ran the schools. However, salaries were low, and many teachers were ill equipped to work with Aboriginal children in a residential school environment (Milloy 1999; Satzewich & Mahood 1995). The agency Superintendents, otherwise known as “Indian Agents,” also played a role in the affairs of residential schools. As employees of the government, they were

responsible for “fulfilling a contradictory mandate of representing and controlling Indian peoples” (Satzewich and Mahood 1995; p. 68). In relation to residential schools, they oversaw the day to day operations of the schools. This included, for example, admitting and discharging students, and processing school application forms (Milloy 1999).

Involvement in residential schools varied from church to church. The Catholics, Anglicans, Presbyterians, and Methodists operated residential schools on behalf of the federal government (United Church of Canada 2000). Both the government and the churches benefitted from this arrangement. Ethical instruction was considered to be as important as secular learning in the teaching of Aboriginal children, therefore Christian missionaries were considered ideal teachers and childcare workers (Miller 1996). Moreover, since Aboriginal education was not explicitly identified as a federal responsibility under the terms of the British North American Act, federal officials wanted to avoid operating the schools directly. The government took advantage of the missionary experiences of the churches and their inexpensive labor power; missionaries were prepared to accept minimal remuneration for their work. (Satzewich & Mahood 1995). For the churches, residential schools offered an opportunity to advance their missionary work, but responsibility for residential schools “entrenched their institutional status and legitimacy in Indian communities” (Titley 1986b; p. 373).

The goal of government officials and missionaries was to bring about the assimilation of Aboriginal people by appropriating and reshaping their future” (Royal Commission 1996, Vol. 3; p. 335). The prevailing view was that every aspect of the traditional Aboriginal way of life was inferior to the ways of the dominant culture (Kennedy 1970). Youths were considered to be especially suitable objects for the state’s assimilation efforts, since the government and the missionaries could “guide them from a state of impurity, incompetence and ignorance, to a state in which they would function as adults acceptable to white society” (Kennedy 1970; p. 5). As one policy stated:

Their education must consist not merely of the training of the mind, but a weaning from the habits and feelings of their ancestors and the acquirements of the language, arts and customs of civilized life (Prentice and Houston 1975; p. 220)

Residential schools were sites of poverty. Inadequate conditions and widespread disease and starvation were common (Milloy 1999). Many reports submitted to the government spoke directly of such conditions. In a number of these reports, student death rates, primarily from tuberculosis, reached 40% to 50% and even higher. In a 1916 report about one residential school, it is noted:

The floors and walls were unclean, the bake-house was filthy and there were indications of mice in the floor...pails were used for toilets in the dormitories and then emptied in the lavatories where they were left and smelled horrific (Milloy 1999; p. 130)

Some individuals were appalled by such conditions, including the Honorable S. H. Blake, a lawyer conducting a review of Anglican mission work across Canada. He reported three main reasons why Aboriginal children were dying: 1) the removing of children from a healthy “outdoor life” to the confines of badly constructed schools, 2) careless administration of health regulators, 3) and lack of adequate medical services (Milloy 1999; p. 239).

These accounts have further been collaborated with oral statements made by former residential school students. Chrisjohn and Young (1994) note that:

Many have recalled how under heated the school buildings were, how cold the floors were in the winter, how oppressive the barracks-style living arrangements were...students have reported how they were chronically underfed, or provided with food unfit for consumption. Some were driven by hunger to obtain food by creative means.

During the period 1910 - 1950, it became obvious that the policy of assimilation was not working. This was the case because many graduates seemed unable to adapt either to Aboriginal or Euro-Canadian society (Coates 1984; p. 85). Confronted with the substantial financial costs of the schools, as well as declining numbers, educational efforts shifted from assimilation to segregation.

By the 1950s, a marked shift in the approach to Aboriginal education had begun to occur. Reforms occurred earlier in the South and were followed in the North much later (Milloy 1999). In the late 1940s, it was recommended by the Senate and the House of Commons that First Nation's children be educated in mainstream schools, and that residential schools be closed.

During this period, many Aboriginal leaders were openly critical of the residential school system. This period also marked the beginning of Aboriginal initiatives to reclaim responsibility for education. Satzewich and Wotherspoon (2000). By the 1980s, all the residential schools had been closed.

2. The Impact of Residential Schools On Patterns Of Sexual Abuse

Removal of the child from the family and community was only the first step in the reshaping process in residential schools. Lack of familial support systems, being forced to abandon one's own language and adopt another, being made to renounce one's own spiritual beliefs, and being treated as worthless, were also common characteristics of the residential school experience for many Aboriginal children.

Many reports indicate that children were also subjected to constant abusive and degrading language. Further, the removal of all the physical trappings and identifications with traditions was an assault to identity. Traditions and individual uniqueness were systematically stripped away.

Widespread physical and sexual abuse in residential schools has also been extensively documented. Hidden away from Aboriginal and non-Aboriginal societies, "schools were opportunistic sites of abuse (Royal Commission 1996, Vol. 1; p. 367). Hundreds and hundreds of individuals have stepped forward with accounts of abuse in many schools throughout the country. Some reports indicate that all the children at some schools were sexually abused (Canadian Psychological Association 1990).

The amount and type of physical and sexual abuse varied between schools, and even within schools at different points in time. Thus, general statements are difficult (Chrisjohn and Young 1994). Nonetheless, it is clear that physical and sexual abuse was widespread in some schools at some points in time.

As George Erasmus, then co-chairman of the Royal Commission on Aboriginal Peoples (1993; p. 4) reported:

Anywhere we have gone, we have been told about the impact of residential schools ...Most of the stories we are hearing are negative...99% of them...Inevitably, we are told about the loss of culture, the loss of language, the loss of parenting skills, the agony of being separated from family, from community — even in the same residential school as other family members, they were separated from their family members — the many years of being away from home, the return home, the alienation, (and) the need to reintegrate into the community.

Statements before the Royal Commission by former residential students also attest to some of the horrific sexual assaults. Most notable, were the reports of sexual abuse by nuns and priests, including: forced sexual intercourse and sexual touching, forced oral-genital contact, and the arranging or inducing of abortions in female children impregnated by men in authority. In one school alone, Joseph Bernier school in Yellowknife, an 18 month investigation uncovered more than 230 possible instances of physical and sexual abuse (Langford 2001).

Many criminal convictions have now been registered against perpetrators. In addition, there are currently some 10,000 civil cases before the courts involving former residential school attendees (Woodward 2000).

The legacy of the residential school system is still being felt today. In a recent report completed by the Law Commission of Canada (2000), for example, it is made clear that the legacy of residential schools includes not only physical and sexual abuse, but also emotional, spiritual, psychological, cultural and racial abuse. For these reasons, the Commission found that residential schools were unlike any other institutions.

The long-lasting effects on individuals, families and communities has been discussed by Chief Ed Metatawabin of the Fort Albany First Nation:

Social maladjustment, abuse of self and others and family breakdown are some of the symptoms prevalent among First Nation Babyboomers. The Graduates of the 'Ste Anne's Residential School' are now trying and often failing to come to grips with life as adults after being raised as children in an atmosphere of fear, loneliness and loathing...Fear of caretakers, loneliness, knowing that elders and family were far away. Loathing from learning to hate oneself, because of the repeated physical, verbal or sexual abuse suffered at the hands of various adult caretakers. This is only a small part of the story (Royal Commission 1996, Vol. 1; p. 377).

Others have also documented the inter-generational social pathology that has been wrought by the residential school system:

The survivors of the Indian residential school system have, in many cases, continued to have their lives shaped by the experiences in these schools. Persons who attended these schools continue to struggle with their identity after years of being taught to hate themselves and their culture. The residential school led to a disruption in the transference of parenting skills from one generation to

the next. Without these skills, many survivors have had difficulty in raising their own children. In residential schools, they learned that adults often exert power and control through abuse. The lessons learned in childhood are often repeated in adulthood with the result that many survivors of the residential school system often inflict abuse on their own children. These children in turn use the same tools on their children (Royal Commission 1996, Vol. 1: p. 379).

Thus, even long after the schools were closed, their effects echo in the lives of subsequent generations of children. It is evident that the destruction of traditional Aboriginal culture has contributed greatly to the incidence of child sexual abuse, as well as rape and other forms of violence against Aboriginal women.

Conclusion

The residential school system had important and complex negative effects for many Aboriginal communities. For Aboriginal people, the connections between the schools' corrosive effects on culture and the dysfunction now experienced in their communities is clear. The residential school system was a concerted attempt to obliterate cultural practices, associations, languages, traditions and beliefs (ChrisJohn and Young 1994). The results included: the destruction of Aboriginal peoples' relationships with nature, the destruction of the identities of many individuals, the undermining of family and community relationships and structures, the loss of traditional values, the loss of traditional institutions and practices related to socialization and education, and the destruction of systems of spirituality and healing (Chrisjohn et. al. 1997; Grant 1996). The inter-generational impacts are incalculable but also significant.

There is a general consensus among Elders and historians that prior to European contact, Aboriginal communities "lived in relative harmony and sexual abuse was not present," at least not to any significant degree (Ellerby & Ellerby, 1998; p. 13). However, the colonization process and, in particular, the trauma that resulted from residential schools, led to a loss of culture. This fact of history cannot be divorced from many of the problems faced by Aboriginal communities today.

Sexual abuse in Aboriginal communities today is linked with the loss of traditional Aboriginal values and practices. Many communities were left without basic ways of teaching community members about healthy living. The loss of traditional customs and practices also undermined capacities to educate children about sexuality. And the exposure to sexual abuse and violence resulting from colonization has allowed abusive patterns to be accepted and perpetuated (Ellerby and Ellerby 1998).

Notes

1. What follows is a brief and very general discussion. Readers are cautioned against adopting a pan-Aboriginal view of gender roles and sexuality in traditional Aboriginal societies. While further research is needed, the limited evidence available suggests that while there are many similarities, different Aboriginal cultures also had different views about the role of women and children, and different values and traditions about sexuality. See for example, Bopp & Bopp (1997a; 1997b) and Solicitor General of Canada (1997).
2. Further information about residential schools can be obtained from Indian and Northern Affairs Canada or from the Aboriginal Healing Foundation. A number of websites are also now available.
3. (Bevan 2001), personal communication.

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Chapter 2

Aboriginal People and the Justice System

In this chapter, the nature and extent of offending by Aboriginal people in Canada will be examined in detail. While Aboriginal sexual offenders have histories and needs that are often quite different from other Aboriginal offenders, there are also many common challenges and solutions that affect all Aboriginal offenders. This chapter discusses Aboriginal people and the justice system generally. Aboriginal sexual offending is the focus of the next chapter.

Aboriginal Involvement in the Criminal Justice System¹

There are several ways of examining Aboriginal involvement in the Canadian criminal justice system that will be reviewed in this section; 1) there is an extensive body of research that documents Aboriginal over-representation, particularly in the corrections system, 2) numerous commissions and public inquiries have examined the history and current status of relations involving Aboriginal people and the Canadian criminal justice system, and 3) there is a growing body of legislation and case law that specifically addresses the treatment of Aboriginal people by the criminal justice system. Each provides an important perspective on the state of current relations. In addition, in the next section, some of the many innovative approaches that Aboriginal communities have developed to respond to the justice needs of their communities will be reviewed.

1. Aboriginal Over-Representation in the Criminal Justice System

There is an extensive body of research that shows there is a large and increasingly disproportionate number of Aboriginal people who are incarcerated in Canadian correctional facilities. The Royal Commission on Aboriginal Peoples (1996) has referred to this phenomena as “injustice personified.”

Over representation statistics are important not only because they point to disparities in the corrections field, but also because what happens in corrections reflects decisions that are made at earlier stages of criminal justice processing — decisions about what laws will be enacted, how laws will be enforced, who will be charged and with what offences, how the trial process will proceed, how offenders will be treated at the sentencing stage, and so on. In a very real way, then, the reality in corrections reflects the net effects of all these earlier decisions.

There are a number of key findings from research on the over-representation of Aboriginal people in correctional institutions:

1. *Although many reports have been completed over the past decade, concerns about the over-representation of Aboriginal people date back many years:*
 - The Canadian Corrections Association, for example, completed a major study entitled *Indians and the Law* in 1967; and

- In 1974, the Law Reform Commission completed a study entitled *The Native Offender and the Law*.
2. *Studies consistently show that Aboriginal people are vastly over-represented in correctional facilities throughout Canada:*
- In Manitoba in 1989, for example, 56% of the 8,475 admissions to provincial and federal correctional facilities were admissions of Aboriginal people (Hamilton and Sinclair 1991);
 - In provincial jails across Canada in 1989-90, 17% of men were Aboriginal (McMahon 1992);
 - La Prairie (1996) has reported that in 1993, 17% of all incarcerated persons in Canada were Aboriginal and 12% of those on probation were Aboriginal. In this year, it was estimated that 3.7% of the general population reported Aboriginal origins;
 - Between 1989 and 1994, Aboriginal admissions to provincial correctional facilities in Saskatchewan were approximately 6.8 times higher than would be expected from the provincial Aboriginal population. Corresponding figures for other provinces included: 5.5 times higher in Alberta, 4.9 times higher in Manitoba, 1.5 times higher in the Northwest Territories, and 2 times higher in Ontario (La Prairie 1996);
 - The percentage of Aboriginal admissions in various provinces in the period from 1988 to 1995 was 17% for B.C., 31% for Alberta, 73% for Saskatchewan, 57% for Manitoba, and 7% for Ontario (La Prairie 1996);
 - When controlling for population, Aboriginal people are 4.24 times more likely to be incarcerated in B.C.. Corresponding figures for other provinces include: 7.24 in Alberta, 24.85 in Saskatchewan, 9.7 in Manitoba, and 3.1 in Ontario. In the provinces surveyed, on average, rates were 8.28 times higher for Aboriginal people. (La Prairie 1996);
 - The Canadian Bar Association reported that whereas Aboriginal people made up about 2% of Canada's adult population in 1988, 10% of the federal penitentiary population was Aboriginal (Canadian Bar Association 1988);
 - On October 5th, 1996, Statistics Canada conducted a one day "snapshot" of all offenders in Canadian correctional facilities (Canadian Centre for Justice Statistics 1998). The findings show that while Aboriginal people account for approximately 2% of the adult population in Canada, they accounted for 17% of the inmates on the day of the snapshot. In provincial/territorial facilities, Aboriginal persons accounted for 18% of the inmates, while in federal facilities they accounted for 14% of the inmates. The proportion of Aboriginal inmates varied considerably across jurisdictions. However, in all jurisdictions, the proportion of Aboriginal inmates was substantially higher than the proportion of Aboriginal persons in the population. These differences were particularly evident in Western Canada. In Saskatchewan, for example, the proportion of Aboriginal persons incarcerated was almost 10 times their proportion in the provincial population (76% of the inmate population compared to 8% of the provincial popu-

lation). In Manitoba, 61% of the inmates were Aboriginal persons (compared to 9% in the provincial population) and in Alberta, over one-third (34%) of the inmates were Aboriginal persons (compared to 4% in the provincial population). In the other jurisdictions, the proportion of Aboriginal persons incarcerated ranged from twice to almost nine times their proportion in the provincial/territorial population;

- In a widely cited Saskatchewan study (Hylton 1981), it has been shown that the 70% of 16 year old treaty males are incarcerated at least once by the time they reach the age of 25. The corresponding figure for non-status Indians and Metis is 34%, while the figure for non-Aboriginals is 8%;
- According to a recent report published by Solicitor General Canada (2001), the national incarceration rate of 129 per 100,000 population is one of the highest among developed countries, but the rate for Aboriginal people is 8 times higher. In some jurisdictions, the differential is much greater. In Saskatchewan, for example, the general rate of incarceration within provincial facilities is 48 per 100,000 population, but the Aboriginal rate is 1,600 per 100,000, 33 times higher; and
- A snapshot taken by Hayden in February 2000 revealed that of 13,000 incarcerated inmates under federal jurisdiction, 2,200 (16.9%) were Aboriginal. Of 13,338 under community supervision, 1,138 (8.5%) were Aboriginal.

3. *Within federal and provincial/territorial correctional jurisdictions, Aboriginal people are consistently more likely to be placed in institutions than in various forms of community supervision.*

- Within provincial and territorial jurisdictions, Aboriginal adult and young offenders are more likely to be incarcerated in custody facilities and less likely to receive probation or some other form of community supervision (Statistics Canada 1999). If they are incarcerated, they are less likely to be paroled (e.g., Hamilton and Sinclair 1991);
- At the federal level, Aboriginal people are also doubly over-represented; they are over-represented within the system generally, but they also make up an even higher and growing proportion of institutional placements. Numerous studies have shown that: 1) Aboriginal people are less likely to apply for parole, 2) less likely to receive parole even if they apply, 3) more likely to be granted partial (i.e., day parole) as opposed to full parole, 4) more likely to have more conditions attached to their parole, 5) more likely to be granted parole at a later stage of their sentences, and 6) more likely to have their parole breached or revoked (e.g., Correctional Service of Canada 2001; La Prairie 1996; Solicitor General Canada 2001; Aboriginal Issues Branch 2001).

4. *Over-representation occurs in pre-trial detention as well as among sentenced inmates:*

- In a survey of Alberta, Saskatchewan, Manitoba, the Northwest Territories and Ontario, Aboriginal persons admitted to pre-trial detention were found to be from 7 times higher in Saskatchewan to 2 times higher in Ontario (La Prairie 1996); and

- Between 1988 and 1995, Aboriginal remand admissions were much higher than the proportion of Aboriginal people in the general population — 16% of total admission in B.C., 29% in Alberta, 70% in Saskatchewan, 55% in Manitoba and 6% in Ontario (La Prairie 1996).

5. *There is no indication that the extent of over-representation of Aboriginal people is diminishing over time. In fact, all the available evidence points to an increasing disparity in admission rates:*

- In Manitoba, the Aboriginal Justice Inquiry reported that Aboriginal admissions to Stony Mountain Penitentiary were 33% of total admissions in 1984, but 46% of total admissions in 1989. Between 1983 and 1989, Aboriginal admissions at Headingly went from 37% to 41% of total admissions (Hamilton and Sinclair 1991). The most recent information available from Manitoba Justice indicates that, on average, the number of Aboriginal people in pre-trial detention has risen from 55% between 1988 and 1995 to 66% for the twelve months ending in March 1999;²
- In Alberta, the Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta (Alberta Task Force 1991) projected that Aboriginal admissions would continue to increase from 29.5% of total admissions in 1989, to 38.5% of admissions by 2011; and
- In federal institutions across Canada, the percentage of Aboriginal offenders was 8.4% in 1981, 8.8% in 1983, 9.6% in 1987, and 11% in 1990 (McMahon 1992). The Royal Commission (1995) reported the corresponding figure was 12% in 1993-94 and 13% in 1995. This represents a rate increase of 55% in less than 15 years. At the end of 1998, the proportions had continued to grow. Aboriginal people made up 16.8% of those in federal institutions (11.7% Indian, 4.1% Metis, and 1% Inuit), up from 15.7% in 1997 (Motiuk and Nafekh 2000). The Correctional Service of Canada (2001) recently reported that the Aboriginal offenders under federal authority had doubled since 1987 and now stands at 17.8% of those in federal institutions.

Saskatchewan is perhaps the only jurisdiction in Canada that has maintained a breakdown of Aboriginal admissions to correctional facilities for at least several decades. As a result, it is possible to gain an appreciation of long-term trends in at least this province. A comparison of admissions data from 1976-77 and 1992-93 (Hylton 1994) reveals a number of startling findings:

- Between 1976-77 and 1992-93, the total number of admissions to Saskatchewan correctional centers increased from 4,712 to 6,889, a 46% increase, during a time when the provincial population remained virtually unchanged. The rate of increase was 40.7% for male admissions, and 111% for female admissions;
- During the same period, the number of Aboriginal people admitted to Saskatchewan correctional centres increased from 3,082 to 4,757, an increase of 54%. Male Aboriginal admissions increased by 48%, while female Aboriginal admissions increased by 107%;
- In terms of overall rates of admission, Aboriginal people made up 65.4% of the total in 1976-77, and 69.1% in 1992-93. The Royal Commission (1995) reported that by 1993-94, the

corresponding figure was 72%. The most recent information from Saskatchewan Justice for 1998-99 indicates that Aboriginal people now make up 76.2% of sentence admissions and 78.3% of remand admissions;³

- Increases in Aboriginal admissions accounted for 77% of the increases in total admissions between 1976-77 and 1992-93; and
- Some 1700 more Aboriginal people were incarcerated in provincial jails in 1992-93 compared to 1976-77. Projected increases prepared in the early 1980s, projections that were rejected by some as too extreme, have proved to be conservative in some instances, particularly in the case of female Aboriginal admissions (Hylton 1981).

6. *Over-representation of Aboriginal people is occurring not only among male adult offenders, but also among female offenders and young offenders.*

- In provincial jails across Canada in 1989-90, 29% of women and 17% of men were Aboriginal (McMahon 1992);
- In 1991, nearly half the women admitted to provincial correctional institutions in Canada were Aboriginal (La Prairie 1996);
- The Canadian Bar Association (1988) reported that whereas Aboriginal people made up about 2% of Canada's population in 1988, 13% of the female federal penitentiary population was Aboriginal. The corresponding figure for the male penitentiary population was 10%;
- In Alberta (Alberta Task Force 1991), it has been reported that Aboriginal men were 30% of male provincial correctional centre admissions, but 45% of female admissions were Aboriginal women. The situation with respect to young offenders was described as "even more dramatic", with projections indicating that 40% of young offender admissions would be Aboriginal admissions by 2011;
- The worrisome trend of increasing female Aboriginal admissions has also been noted in Saskatchewan (Hylton, 1994). The most recent figures for 1998-99 indicate that 89% of female sentenced admissions and 89% of female remand admissions were admissions of Aboriginal women;⁴
- At the federal level, the Correctional Services of Canada (1996) has reported that 62 of 322 (19.3%) women incarcerated in federal penitentiaries were Aboriginal women;
- Linn (1992a) reported that 70% of youth in custody in Saskatchewan were Aboriginal; and
- A review of Manitoba juvenile court records between 1930 and 1959 revealed that, during this time, less than 10% of the caseload consisted of Aboriginal youth (Kaminski 1991). In 1990, a review of custody facilities for young offenders indicated that 64% of the Manitoba Youth Centre's Population and 78% of the Agassiz Youth Centre's population were Aboriginal (McMahon 1992).

These data clearly show that there is widespread over-representation of Aboriginal people within the Canadian criminal justice system.

2. Public Inquiries⁵

During the past two decades, a number of major public inquiries and reviews have been commissioned by Canadian governments and other bodies to examine Aboriginal justice issues. While it is beyond the scope of this review to provide the details of all of these reports, some of the most significant studies completed over the past decade will be discussed.

The findings and conclusions of these public inquiries and major reviews are important for a number of reasons:

- These inquiries and reviews usually include a comprehensive synthesis and analysis of large bodies of relevant research;
- Additional research to fill gaps in information and understanding is often undertaken as part of the inquiry process;
- These inquiries and reviews are often able to go beyond the strict confines of scientific research to gather a much broader base of evidence. This allows for more authoritative findings and conclusions to be reached than would be possible with statistical studies alone. In particular, such inquiries and reviews often hear personal testimony, hold public hearings, and seek out the advice of experts in the field; and
- Such studies and reviews are headed by Canadians and Canadian institutions with outstanding reputations for objectivity, leadership and judgement.

For these reasons, the findings and conclusions reached by public commissions and inquiries are worthy of careful attention and should be regarded as highly authoritative. A brief profile of the workings of two such inquiries will serve to illustrate the breadth and the depth of the processes involved in gathering evidence and reaching conclusions.

The Royal Commission On Aboriginal Peoples was appointed the Prime Minister in 1991. Its final report, issued in 1996, consisted of some four thousand pages organized into five volumes. The report contains over 400 recommendations. A number of interim reports were also produced by the Commission.

The Commission was comprised of seven Aboriginal and non-Aboriginal leaders, including two co-chairs: Georges Erasmus, former National Chief of the Assembly of First Nations, and the Honorable Rene Dussault, a former senior civil servant and now a superior court judge in Quebec. The Commission was asked to investigate all aspects of the relationship between the Aboriginal peoples and Canadian society, and it was given a comprehensive 16 point mandate, among the broadest mandates of any Royal Commission in Canadian history.

The Commission relied upon two general sources of information and advice. Firstly, extensive consultations were carried out. Public input was invited through advertisements, a video explaining the work of the Commission, a toll-free telephone line (available in five languages), and the hiring of local community facilitators.

There was also outreach to recognized experts in the community. In addition, four rounds of public hearings were carried out. This involved visits to 96 communities throughout Canada, 177 days of hearings, 2067 presentations, nearly 1000 written briefs, and over 100,000 pages of transcript. International visits, for example, to the United States and Greenland, were also undertaken.

“Round Table” discussions involving experts in the field, as well as special consultations, were organized on health and social issues, education, justice, urban issues, economic development, suicide, Metis issues, the relocation of northern Inuit, and residential schools. An Intervenor Participation Program provided funds to allow Aboriginal and non-Aboriginal organizations to prepare some 220 briefs to the Commission.

Secondly, the Commission sponsored an extensive research program. Some 350 research projects focused on governance, lands and economy, social and cultural matters, justice issues, the North, and many other issues. Community case studies, including a number of case studies focusing on justice issues, oral histories, literature reviews, academic research, and other types of research initiatives were all a part of the Commission’s research program.

The Aboriginal Justice Inquiry was established by the government of Manitoba in April 1988 in response to two incidents. The first was the 1987 trial of two men for the murder of Helen Betty Osborne, a trial that came a full 16 years after the murder. The second incident involved the death of John Joseph Harper in March 1988. Harper, the executive director of the Island Lake Tribal Council, died following an encounter with a City of Winnipeg police officer. The next day the police department exonerated the officer despite many unanswered questions.

Two Commissioners were appointed, Associate Chief Justice A.C. Hamilton of the Manitoba Court of Queen’s Bench, and Associate Chief Judge C.M. Sinclair of the Manitoba Provincial Court. The inquiry issued its report in 1991.

The mandate of the Manitoba Inquiry was to inquire and make findings with respect to Aboriginal people in the justice system in Manitoba, and to suggest ways in which these conditions might be improved. The Inquiry was asked to consider all aspects of the J. J. Harper and Helen Betty Osborne cases and to make any additional recommendations that it felt appropriate regarding the justice system, including policing, courts and correctional services.

The Commission decided from the outset that the Inquiry would employ a variety of approaches. For the Osborne and Harper matters, the Commissioners decided to proceed in a formal way. With regard to the more general questions, the Commission described their processes in the following way:

For the general questions about how the justice system dealt with Aboriginal people, we decided it was critical to hear directly from Aboriginal people. In order to do this, we traveled to the Aborigi-

nal communities of this province: from Roseau River in the South to Tadoule Lake in the North, from Little Grand Rapids and Shamattawa in the East to The Pas and Sioux Valley in the West. We visited over 36 Aboriginal communities, approximately 20 of which were accessible only by winter roads and air travel. We also held hearings in seven other Manitoba communities, including extensive hearings in the city of Winnipeg. We held hearings in five provincial correctional institutions.

Non-Aboriginal persons also were encouraged to make presentations and many, including representatives of various governments, police forces and social agencies, did so. All the presentations we heard were crucial in coming to an understanding of the problems and in shaping our findings and recommendations.

In these hearings we did not attempt to make determinations of “fact” about individual incidents and injustices that were related to us. Our primary concern was to learn how the legal system was working, what people felt about the system and if people were being well served by it. Approximately 1,000 people made presentations at our community hearings.

In addition to the hearings, we conducted research projects covering a wide range of subjects. Some of the research was done by our own research staff, including a survey of inmates at seven correctional institutions, a survey of Crown and defense lawyers, and a survey of members of the judiciary. We also commissioned experts in various areas to prepare background papers for us. We combined this information with our own experience and the presentations made to us during community hearings to come to the conclusions we have reached.

To expand our understanding further, we visited a number of tribal courts in the United States, conducted a symposium on tribal courts and sponsored a conference of Aboriginal elders. In total, we received more than 1,200 presentations and exhibits, held 123 days of hearings, traveled more than 18,000 kilometers in Manitoba alone and accumulated approximately 21,000 pages of transcripts.

This brief overview of the workings of two public inquiries serves to underscore the extensive information gathering processes upon which their findings and conclusions are based. While not all public inquiries engage in such extensive consultations and research, taken together, the evidence they have amassed on Aboriginal justice issues is very considerable indeed.

An overview of some of the findings and conclusions of some of the key public inquiries and reviews conducted over the past decade will now be provided:

1. The Royal Commission On Aboriginal Peoples

As already indicated, justice issues were a key concern for the Royal Commission. Extensive research was commissioned, a synthesis of previous studies and inquiries was prepared, and a “round table” forum was convened (Royal Commission 1993). The Commission also issued a special report – *Bridging The Cultural Divide: A Report on Aboriginal People and Criminal Justice In Canada* (Royal Commission 1995).

The round table brought together by the Commission in 1992 included a number of prominent judges, police officers, government ministers and senior bureaucrats, as well as representatives from many Aboriginal organizations. The first conclusion reached by the Round Table was that the justice system had failed Aboriginal people (Royal Commission 1993). The special report issued by the Commission (Royal Commission 1995) reconfirmed this conclusion, but it went further. In particular, the Commission observed:

- The Canadian criminal justice system had failed the Aboriginal peoples of Canada — Indian, Inuit and Metis people, on-reserve and off-reserve, urban and rural — in all territorial and government jurisdictions;
- The principle reason for this crushing failure was the fundamentally different world views of Aboriginal and non-Aboriginal people with respect to such elemental issues as the substantive content of justice and the process of achieving justice;
- Aboriginal people are over-represented in the criminal justice system, most dramatically and significantly in provincial and territorial prisons and federal penitentiaries;
- Over-representation of Aboriginal people in the criminal justice system is a product of both high levels of crime among Aboriginal people and systemic discrimination; and
- High levels of Aboriginal crime, like other symptoms of social disorder such as suicide and substance abuse, are linked to the historical and contemporary experience of colonialism, which has systematically undermined the social, cultural and economic foundations of Aboriginal peoples, including their distinctive forms of justice.

In the Commission's view (1995; p. 33):

Over-representation . . . suggests either that Aboriginal peoples are committing disproportionately more crimes or that they are the victims of systemic discrimination. Recent justice studies and reports provide strong confirmatory evidence that both phenomena operate in combination.

The Commission called for sweeping reforms, including a recognition of the right of Aboriginal peoples to establish their own Aboriginal justice systems.

2. The Aboriginal Justice Inquiry Of Manitoba

The Aboriginal Justice Inquiry (Hamilton and Sinclair 1991; pp 1, 86-7, 249) reported:

The justice system has failed Manitoba's Aboriginal people on a massive scale. It has been insensitive and inaccessible, and has arrested and imprisoned Aboriginal people in grossly disproportionate numbers. Aboriginal people who are arrested are more likely to be denied bail, spend more time in pretrial detention and spend less time with their lawyers, and, if convicted, are more likely to be incarcerated . . . For more than a century the rights of Aboriginal people have been ignored or eroded . . . Aboriginal peoples have experienced the most entrenched racial discrimination of any group in Canada.

Discrimination against Aboriginal people has been a central policy of Canadian governments since Confederation . . . The discrimination against Aboriginal people by our governments and permitted by the general Canadian population represents a monumental symbol of intolerance . . . In short, the current court system is inefficient, insensitive and, when compared to the service provided to non-Aboriginal people, decidedly unequal.

The Commission developed 293 recommendations to deal with these problems.

3. Justice on Trial: The Alberta Task Force Report

The Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta (Alberta Task Force 1991) was not established in response to a specific case. Rather, it was formed to address more general concerns about the impact of the criminal justice system on Aboriginal peoples. These concerns included the disproportionate number of Aboriginal people in correctional institutions and the delivery of criminal justice services to Aboriginal people by non-Aboriginals. The purpose of the Task Force, according to its own terms of reference, was:

to complete a review of the criminal justice system in Alberta as it relates to Indian and Metis people and to provide a report for the Solicitor General of Canada, the Attorney General of Alberta and the Solicitor General of Alberta, which identifies any problems and proposes solutions to ensure the Indian and Metis people receive fair, just and equitable treatment at all stages of the criminal justice process in Alberta (pg. 1-1).

The Task Force made a total of 340 recommendations in the areas of policing, legal aid, the courts, judges, prosecutors and lawyers, and corrections. Among the recurring themes in all these areas were: 1) the need for increased communication and liaison among and between Aboriginal communities and organizations, police agencies and government departments, 2) the need for increased and enhanced cross-cultural training for staff within the criminal justice system, 3) the need to increase the number of Aboriginal people employed within the criminal justice system, 4) the need to develop custodial alternatives and options for remanded Aboriginal accused and sentenced Aboriginal offenders, 5) the need to increase elder involvement in the criminal justice system, 6) the need to expand the availability of alcohol and drug treatment programs, 7) the need to expand Aboriginal community-based resources, 8) the need to increase Aboriginal involvement in criminal justice system planning, program development and service delivery, and 9) the need to increase public education regarding Aboriginal issues, as well as Aboriginal awareness of the workings of the criminal justice system.

Specifically in regard to the issue of discrimination, the Alberta Task Force (Vol. 1, pp. 12-13) found that:

Aboriginal people are victims of racism, discrimination and systemic discrimination both from within the criminal justice system and from society at large.

4. The Donald Marshall Royal Commission

On the evening of May 28, 1971, a seventeen year-old youth, Sandford Seale, was killed in Wentworth Park in Sydney, Nova Scotia. Donald Marshall, Jr., a Micmac, was convicted of Seale's murder and

sentenced to life imprisonment. Upon reinvestigation of the case eleven years later, it was confirmed that Marshall was innocent. He was released on parole and later acquitted. In May 1983, Roy Ebsary was charged with the killing of Seale and, after three trials, he was convicted of manslaughter and sentenced to three years in prison. In 1986, the Court of Appeal reduced his sentence to one year.

The principal purpose of the Royal Commission on the Donald Marshall Jr. Prosecution was to determine why Donald Marshall was wrongfully convicted and to make recommendations that would ensure that such a miscarriage of justice did not happen again. Therefore, in addition to investigating the Marshall case, the scope of the Commission encompassed an examination of the broader context for the administration of criminal justice within Nova Scotia.

Among the more general findings were the following: the criminal justice system failed Donald Marshall at every point from his arrest and conviction up to and beyond his acquittal by the Supreme Court of Nova Scotia, this miscarriage of justice could have been prevented if those involved had been competent in discharging their responsibilities, and the fact that Marshall was Aboriginal contributed to the miscarriage of justice (Hickman 1989).

Of particular note, the Commission (Hickman 1989; pp. 15, 17, 162, 193, 220-221) stated:

The criminal justice system failed Donald Marshall Jr. at virtually every turn . . . the evidence is once again persuasive and the conclusion inescapable that Donald Marshall Jr. was convicted and sent to prison, in part at least, because he was a native person . . . We are convinced that if Marshall had been White, the investigation would have taken a different course. We have no direct evidence to support this belief. It is our opinion based on our observation of many of the witnesses who appeared before us . . . If Marshall's treatment in this case occurred because he was a Native, then other Natives will have — and have had — similar experiences . . . Each component of the system - every check and balance — failed . . . The conclusion we have reached is that the system does not work fairly or equally. Justice is not blind to colour or status . . . there is a two tier system of justice . . . the system does respond differently, depending on the status of the person investigated . . . Officials in the Department of the Attorney General are more concerned about the career of a politician than the reputation of an Indian; they are quick to write superficial and unprofessional opinions that support not investigating or charging a politician yet search for reasons to limit compensation paid to an Indian for years of wrongful imprisonment; and they require substantially more likelihood of conviction before charging a politician than an Indian.

The Commission made 82 recommendations to address these issues.

5. The Saskatchewan Indian and Metis Justice Review Committees

The Saskatchewan Department of Justice, the Government of Canada, and the Federation of Saskatchewan Indian Nations agreed to establish a Saskatchewan Indian and Metis Justice Review Committees in 1991 (Linn 1992a;1992b).

The objective was not to address past wrongs, but rather to examine ways to make changes within the present criminal justice system, while encouraging expansion of positive changes already under way.

The Committees recognized both the increasing number of similar studies and the lack of any significant progress in implementing their recommendations. For these reasons, they adopted a short time frame in which to identify practical solutions and initiatives that could be implemented immediately or within a reasonable period.

The recommendations made in the two reports were identical, except for three recommendations specifically concerning Indian people. Recommendations were directed primarily to making the criminal justice system more responsive to Indian and Metis people. They included matters such as access to programs, employment equity, and participation in decision making.

The Committees (Linn 1992a; pp 20, 23, 30) expressed particular about relations with the police:

. . . policing is the most common point of contact between the aboriginal community and the criminal justice system. As such, policing often sets the tone for any alienation, cultural insensitivity or systemic racism which aboriginal people might encounter in their dealings with the criminal justice system . . . we heard a number of concerns with respect to police conduct in their dealings with aboriginal people. Concerns revolved around matters such as excessive use of force, disrespect for the rights of accused persons, selective enforcement practices, multiple charging, witness intimidation, the mistreatment of accused persons while in police custody, police harassment, and disrespect for aboriginal custom and tradition. Tragically, and not without reason, few aboriginal people have faith in existing complaints investigation processes. By and large, they consider the mechanisms currently in place to entail little more than “police investigating police” and, as such, fundamentally incapable of conducting fair and impartial investigations of their complaints. . . . it would be a mistake to assume that cross-cultural training, in and of itself, will eliminate racism within police ranks.

6. The Law Reform Commission Of Canada

The Law Reform Commission’s study was initiated in June 1990. The Minister of Justice asked the Commission to study the *Criminal Code* and related statutes, and to examine the extent to which those laws ensure that Aboriginal persons and persons who were members of cultural or religious minorities have equal access to justice and were treated equitably and with respect.

The Commission divided its work into an Aboriginal justice review component and a component that reviewed other cultural and religious issues. One of the goals of the study was to propose reforms that would secure formal equality in access to justice. At the same time, however, the Commission attempted to identify when equal treatment before the law necessitated recognition and incorporation of cultural distinctiveness within the criminal justice system.

The Commission (1991; p. 16,75) found:

The present system fails the Aboriginal peoples . . . Canada’s current sentencing laws are archaic and inadequate . . . in our view, the current regime fails to respect the Charter’s guarantees of equality and fundamental justice in a number of important respects.

7. The Cariboo-Chilcotin Justice Inquiry

The Cariboo-Chilcotin Justice Inquiry was established in 1992 to inquire into the relationship between Aboriginal people of the Cariboo-Chilcotin area of British Columbia and the justice system. It was formed in response to years of complaints by the Aboriginal people living in the region about their treatment by the justice system. The purpose of the inquiry was to “hear the complaints of the native people in the area, to try to understand the causes or reasons for those complaints and to propose remedies” (Cariboo-Chilcotin Justice Inquiry 1993; p. 6).

The inquiry was divided into two phases. The first phase involved visiting 10 of the 15 reserves in the area to hear the complaints of the local people. The second phase involved submissions from interested parties.

The Inquiry (p. 10) found a serious “attitude problem” among the police:

... by far most complaints were directed at the police . . . a “reactive” and “strict law enforcement” policy of the force, and the training of officers with near-exclusive emphasis on the policy, has so tended to alienate the officers from the communities they serve that it has created needless resentment and problems.

The Inquiry found that the abuse of police powers with regard to Aboriginal people included: illegal detainment, non-compliance to requests for assistance, invasion of privacy, entry of homes without a warrant, unprovoked use of firearms for intimidation purposes, using excessive force, and many other problems. The Inquiry (p.27) noted:

There were unquestionably some members of the RCMP who used excessive force and intimidation against the native people. A few of these members chose to punish some native people because of the RCMP member’s own subjective evaluation of the conduct and inadequacies of the native person. And some of these same members reflected a degree of disrespect that stretched to contempt and ridicule.

Aboriginal people saw complaints against the RCMP as futile. The Inquiry noted (p. 22): “Given the manner in which the force closes ranks around its own and is not accountable to the community, it is little wonder that natives consider the police to be above the law.”

Addressing allegations of racism by the Tsilhqot’n people against the police, Judge Sarich of the Commission had this to say:

There is also an attitude problem among the non-Native population from which nearly all police officers are recruited. The Indian Act of Canada is premised upon the postulate that Native people are incapable of managing their own lives, that they cannot make their way in non-Native society and that they are inferior to non-Natives. These concepts have been advanced for so long by the Government of Canada through the Department of Indian Affairs, and so uncritically accepted for so many decades by the non-Native population, that there has come to be an unconscious acceptance of these so-called truths. The dependency, the poverty, the self-destruction to which the

Natives were reduced by a conscious policy of government were unspoken confirmation of this “truth.” This was demonstrated in many ways: from the spontaneous condescension of calling Native people by their first names in a formal situation, to a demeaning and disrespectful attempt at humour in a poem, to a thoughtless comment by an otherwise good and sensitive police officer to grade school children that his job was to “arrest drunken Indians and put them in jail.” There were other manifestations of that attitude, particularly by those casually inquiring about the purpose and work of the Commission. It was clear that many officers had brought this attitude with them into uniform by their manner of dealing with Native people. In the business of policing, it explains these officers’ readiness to unquestioningly accept allegations made against Natives while keeping a closed mind to anything they raise in answer. It tends to explain the apparent disrespect for any rights of Native people and the aggression and arrogance to which they are often subjected (p.11).

8. Ontario Commission On Racism in The Criminal Justice System

While the inquiries and commissions considered thus far have been concerned with Aboriginal justice issues, the Commission on Systemic Racism in the Ontario Criminal Justice System (hereinafter the Ontario Commission) had a broader focus. It was established in October 1992 to: “inquire into and make recommendations about the extent to which criminal justice system policies, practices and procedures reflect systemic racism” (Ontario Commission 1995a; p. 7). Although all racial minorities were considered, the main emphasis of the Commission’s work was on the treatment of blacks.

The Commission’s findings were based on an extensive and multifaceted inquiry process that utilized formal and informal interviews, public meetings, focus group sessions, written and oral submissions, and public hearings across the province. The Commission also conducted literature reviews and carried out its own program of empirical research into the perceptions, experiences and outcomes of criminal justice processes

The Commission (1995a; p. 7) describes systemic racism in the following way:

throughout society and its institutions, patterns and practices develop which, although they may not be intended to disadvantage any group, can have the effect of disadvantaging or permitting discrimination against some segments of society. In so far as such patterns and practices cause racial minority people to experience worse treatment than white people, a system may be said to reflect systemic racism.

The Commission determined that systemic racism or “racialization” was widespread within the Ontario criminal justice system. For the Commission (1995b; p. 40), racialization was described as a process “by which societies construct races as real, different and unequal in ways that matter to economic, political, and social life.”

The Commission found that racialization produced different outcomes at every stage of the criminal justice process. Numerous instances of overt and systemic discrimination involving the police, the Crown, the courts, and the correctional system were documented.

The Commission also determined that the differential treatment afforded to racialized groups could not be justified on the basis of so-called “legal” variables, but instead, was influenced by “extra-legal” considerations relating to race.

The Commission found that a wide scope for discretionary decision making existed within the justice system and that this created the opportunity for “racialization” to occur. The Commission (1995b; p. iv, 104) notes:

Wherever broad discretion exists, racialization can influence decisions and produce racial inequality in outcomes . . . Discretion is exercised in subtle, complex and interactive ways which leave considerable scope for racialization to influence practices and decisions, and for bias to be transmitted from one stage of the process to others.

The Commission (1995b; pp. x, xi) recommended an “equality strategy” to bring about racial equality within the justice system:

This framework has four key elements: anti-racism training of justice system personnel; employment of racialized persons in the administration of justice; participation of racialized persons in the development of justice policies; and monitoring of practices for evidence of racial inequality . . . The elimination of systemic racism . . . will require integrating the principles of inclusion, responsiveness, and accountability into all aspects of the criminal justice system, together with an overriding commitment to restraint when invoking judicial sanctions.

The Commissioners found that three themes emerged in their consultation process regarding the correctional system: 1) racial hostility and intolerance in prison environments, 2) racial segregation of prisoners within and among prisons, and 3) racial inequality in the delivery of prisons services.

Among the Commission’s (1994; pp. ii, iii) major findings:

- “In our investigation, we found both overt and systemic racism in Ontario prisons”;
- Racist language and attitudes were found to be pervasive in many Ontario prisons. “It is not a few individuals but the culture of corrections that must change”;
- The managers were found to be contributors to the “maintenance of racially poisoned environments” through both their silence and their failure to take preventative measures to counter racism. In particular, management failed to recognize racism as a significant problem. Rather, racism was viewed as a dynamic to be manipulated in order to maintain peace and order in the prison system. “The negative feelings, adversarial relationships, and hostility generated by such practices can only contribute to dissension, conflict, unrest, and instability;”
- Racial segregation is tolerated, and sometimes encouraged, in allocating prisoners to living units. Racial segregation is also linked to the provision of rehabilitative programs in some prisons; and

- There was a tendency for prison staff to see “equality” as providing the same options for all prisoners, regardless of their individual and cultural differences. “The Ontario prison system principally caters to white, Euro-Canadian norms, and many of the service needs of black and other racial minority prisoners remain either unacknowledged or dismissed.”

In summary, the Commission found that many institutions operated by the Ontario Ministry of Correctional Services failed to recognize the inherent dignity and worth of prisoners or to treat prisoners as individuals. Many services were found to be inappropriate to the needs of minority group members. Yet, minority prisoners from these communities who struggled to receive appropriate services that were equivalent to those for white prisoners were often branded as over-assertive or as trouble-makers.

Specific recommendations pertaining to the corrections system included: the appointment of an Anti-Racism Coordinator with a broad mandate to bring about change (research, audits, development and implementation of anti-racism strategies, etc.), the abolition of racial segregation of prisoners, the standardization of staff training, the development and implementation of non-discriminatory pre-trial and post-sentence policies, and the provision of culturally appropriate services.

Regrettably, the patterns documented by the Commission appear to be only the latest chapter in a long history of institutional and overt racism in Ontario. Mosher (1998; p. 196) has shown that members of racialized groups “were subjected to considerable discrimination in virtually all spheres of the Canadian social, legal, and criminal justice systems in the period from 1892 to 1961”.

9. Other Reports

Numerous other reports and inquiries have reached conclusions similar to those detailed above. For example:

- A review by the Canadian Bar Association (1988; pp. 76-77) comments that: “The reality . . . under current justice regimes is one of gross inequality of treatment for native people . . . Aboriginal peoples of Canada have faced and continue to face injustice within the legal and justice systems;
- Kimmelman (1985; pp. 328-329) found that “Cultural bias in the child welfare system is practiced at every level from the social worker who works directly with the family, through the lawyers who represent the various parties in a custody case, to the Judges who make the final disposition in the case . . . unequivocally . . . cultural genocide has been taking place in a systemic, routine manner.”
- The Osnaburgh-Windigo Tribal Council Review Committee (1990; p. 103) pointed out that “It is recognized that some Euro-Canadian police officers possess racist attitudes towards native persons . . . These racist attitudes stem from a lack of understanding and knowledge of cultural differences between natives and non-native people.”
- In southern Alberta, the Blood Tribe initiated an inquiry to get answers to more than 100 sudden deaths that had occurred during the 1980’s. They felt many of these deaths had not been adequately explained. Many of these deaths involved some form of justice system involvement (Roth, 1991); and

- Similar findings about inequitable treatment have been raised in many other federal inquiries, task forces and commissions (e.g., Indian and Northern Affairs 1990; Correctional Service Of Canada 1991; Solicitor General 1992).

It has now become commonplace for prominent representatives from the justice system to openly acknowledge the justice system's inappropriate treatment of Aboriginal people. In summarizing the conclusions from these inquiries and reviews, Rudin (1999; p. 208) has said:

In addition to statistics related to incarceration, the failure of the criminal justice system with regard to Aboriginal people has also been commented on by virtually every government study or inquiry with a mandate to review Aboriginal justice issues. Whether it be a review of a particular incident (e.g., the Royal Commission on the Donald Marshall, Jr., Prosecution, 1989), inquiries into the situation of particular communities (e.g., the Report of the Osnaburgh/Windigo Tribal Justice Review Committee, 1990, or the Report on the Cariboo-Chilcotin Justice Inquiry, 1993), or more broadly-based studies (e.g., the Report of the Aboriginal Justice Inquiry of Manitoba, 1991, or the report of the Royal Commission on Aboriginal People, 1996a), the conclusions have been virtually the same.

While members of other racialized groups are also affected, many authoritative assessments have concluded that Aboriginal people in Canada are the most disadvantaged on account of racial prejudice. For example, a report for the Canadian Bar Association (Jackson 1989; p. 215) states: "More than any other group in Canada, they (Aboriginal people) are subject to the damaging impacts of the criminal justice system's heaviest sanctions. This has also been the conclusion of the Royal Commission on Aboriginal Peoples (1995), the Aboriginal Justice Inquiry of Manitoba (Hamilton and Sinclair 1991) and many other commissions and inquiries.

3. Parliament and the Courts

Inappropriate and ineffective treatment of Aboriginal people by the Canadian justice system has also been recognized by Canadian law makers and Canadian courts. For example:

- Parliament has acknowledged that the application of the same sentencing principles and practices in every case may lead to systemic discrimination against Aboriginal people. In recognition that usual sentencing practices may not take into account the distinct culture and needs of Aboriginal offenders, parliament enacted Section 718.2(e) of the criminal code. In *R. v. Gladue*, the Supreme Court comments on the effects of this provision: "In sentencing an aboriginal offender, the judge must consider: (a) the unique systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection. In order to undertake these considerations the sentencing judge will require information pertaining to the accused. Judges may take judicial notice of the broad systemic and background factors affecting aboriginal people, and of the priority given in aboriginal cultures to a restorative approach to sentencing. In the usual course of events, additional case-specific information will come from counsel and from a pre-sentence report which takes into account the systemic or background factors and the appropriate sentencing procedures

and sanctions, which in turn may come from representations of the relevant aboriginal community . . . if there is no alternative to incarceration the length of the term must be carefully considered. The jail term for an aboriginal offender may in some circumstances be less than the term imposed on a non-aboriginal offender for the same offence . . . Section 718.2(e) applies to all aboriginal persons wherever they reside, whether on- or off-reserve, in a large city or a rural area. In defining the relevant aboriginal community for the purpose of achieving an effective sentence, the term 'community' must be defined broadly so as to include any network of support and interaction that might be available, including one in an urban centre. At the same time, the residence of the aboriginal offender in an urban centre that lacks any network of support does not relieve the sentencing judge of the obligation to try to find an alternative to imprisonment" (pp. 4-5);

- The declaration of principle in Canada's proposed new Youth Criminal Justice Act⁶ requires that young persons who commit offences be treated in a manner that respects "gender, ethnic, cultural and linguistic differences."
- In *R.v. Williams* (1998 S.C.J. No. 49 Q.L.), the Supreme Court of Canada unanimously ruled that prospective jurors can be questioned about their racial views to preserve the fairness of a trial. The case revolved around an Aboriginal man, Victor Williams, who was denied the right to ask if any jurors might be "Indian haters" during his trial for a 1993 robbery. The court said Williams had a right to be concerned, given widespread racial prejudice towards Aboriginal people. McLachlin J. (p.41) states in the decision: "The relevant community for purpose of the rule is the community from which the jury pool is drawn. That community may or may not harbour prejudices against aboriginals . . . That said, absent evidence to the contrary, where widespread prejudice against people of the accused's race is demonstrated at the national or provincial level, it will often be reasonable to infer that such prejudice is replicated at the community level;"
- Following the Williams case, two Saskatchewan cases (*Fleury* and *Key*) found that there was evidence of widespread overt and systemic racism towards Aboriginal people. In *Fleury*, the court found that "Widespread anti-Aboriginal racism is a grim reality in Canada and in Saskatchewan . . . aboriginal people . . . are prime victims of racial prejudice" (pp. 16,17). The court allowed jurors to be screened for racial bias. During the screening process, five prospective jurors openly admitted that they held racial biases towards Aboriginal people that they would not be able to set aside if they were called to serve on the jury. A more expansive screening process was approved in *R. v. Key*, however, the matter did not proceed to trial;
- Sections 81 and 84 of the *Corrections and Conditional Release Act*, which is the main legislation governing the operations of the federal correctional system, makes explicit provisions for corrections authorities to enter into partnerships with Aboriginal communities to promote better services for Aboriginal offenders.

These and other laws and rulings clearly indicate that Canadian law makers and Canadian courts have acknowledged the failure of the Canadian justice system in responding appropriately to the needs of Aboriginal offenders, victims and communities. Furthermore, Parliament and the courts have recognized that to achieve fairness in the administration of justice for Aboriginal people, extra-ordinary laws, procedures and programs will be required.

Aboriginal Justice Programs

Much has been written, particularly in recent years, about the design and delivery of Aboriginal justice programs. Indeed, many of the public inquiries cited earlier devoted very considerable efforts to articulating strategies for reducing crime and improving the effectiveness of justice services in Aboriginal communities. While it is beyond the scope of this review to summarize all of these reports, it is important to identify some of the key principles and directions that have emerged from this considerable body of work. In considering strategies for Aboriginal sex offenders, it will be important to take these principles and recommendations into account.

1. Historical Approaches To Justice Services For Aboriginal People: The Failure of the “Doing For” Approach⁷

Before examining some of the latest trends in Aboriginal justice services, it is worth reviewing how governments have typically gone about trying to improve services for Aboriginal people in the past. These approaches have often produced limited results and have now mostly fallen into disfavour with Aboriginal governments and organizations.

Over the years, there have been many attempts to improve the effectiveness of justice services for Aboriginal people. These efforts have taken many forms, but there have been a few common types of approaches.

One common measure has involved the adoption of affirmative action hiring policies. Virtually all agencies serving Aboriginal people now claim that they make a special effort to recruit Aboriginal staff. Some agencies have gone to considerable lengths and have even had formal affirmative action programs approved by their human rights authorities.

Most affirmative action programs entail the design and implementation of specialized recruitment programs. These may involve recruiting at educational institutions with high Aboriginal enrolment, advertising in Aboriginal publications, employing the assistance of Aboriginal leaders in identifying suitable applicants, and using specialized recruitment firms.

These and other methods have been employed to recruit Aboriginal welfare workers, family services staff, corrections staff, police officers and many others.

Affirmative action programs appear to have met with very limited success. Employers claim that they are truly committed to increasing the number of Aboriginal staff but, with few exceptions, their efforts have been largely ineffectual. Even after these programs have been in place for some time, there are typically very few Aboriginal staff employed in the justice system.

In recognition of some of the problems of affirmative action programs, organizations have sometimes tried to improve the effectiveness of services by establishing specialized Aboriginal units, staffed by Aboriginal employees, within larger non-Aboriginal programs and agencies. Perhaps the best known example of this approach is the Indian Special Constable program established by the RCMP.

Similar programs have, however, been established for probation officers, corrections officers, welfare workers, justices of the peace, substance abuse counsellors, court workers, health care providers, and many others.

On the whole, these types of reforms seem to have been somewhat more successful than the affirmative action programs discussed previously in attracting and retaining Aboriginal staff and in delivering quality services to Aboriginal people. These initiatives have, however, encountered many of the same problems as affirmative action programs, although not always to the same degree.

Another common approach in attempting to improve the effectiveness of justice programs for Aboriginal people has focussed on promoting greater awareness among non-Aboriginal staff about the needs and circumstances of Aboriginal clients. These initiatives have usually involved programs of cross-cultural awareness, as well as related training and education programs. Such programs have been widely adopted in non-Aboriginal agencies that have a large Aboriginal caseload. Available evidence indicates that the effectiveness of these initiatives very much depends on the program design and the abilities of the resource persons. Results are by no means uniformly positive and, in fact, some programs have had the opposite of the intended effect.

Other reforms have taken the form of allowing Aboriginal input into decision making in non-Aboriginal programs. Elders are consulted about the sentencing of offenders. The Band Council is consulted about the apprehension of a child or the treatment of a young offender. Community committees are established to provide community input into the work of non-Aboriginal agencies.

These reforms often result in improved relations between Aboriginal communities and the mainstream service system. In addition, the effectiveness of some programs may improve because Aboriginal input leads to better decisions and greater community acceptance of decisions. Yet, the improvements in program effectiveness that are brought about as a result of these types of initiatives are often far less than dramatic. Moreover, many opportunities for Aboriginal input rely on informal arrangements that depend on the interests and good will of individual officials. Because they seldom become institutionalized, these types of arrangements usually remain in effect only for a limited time.

Some reforms have involved the introduction of traditional Aboriginal practices into non-Aboriginal programs.

Correctional institutions, for example, sometimes permit sweat lodges, sweet grass ceremonies, and the attendance of elders and spiritual leaders. The evidence suggests, however, that officials are often not fully committed to these programs. They are often not accorded the same importance as programs for non-Aboriginal offenders and they may be cancelled or modified to comply with security and other program requirements.

On the whole, while some exceptions do exist, the types of reform efforts described here have met with limited success. While some improvements in effectiveness and acceptance have been brought about, on the whole, the gains have been modest. Furthermore, even with these types of reforms, non-Aboriginal programs do not generally achieve the level of effectiveness or acceptance in Aboriginal communities that these same programs enjoy in non-Aboriginal communities. Moreover, despite these various

initiatives, Aboriginal people continue to be incarcerated at disproportionate rates, negative attitudes towards the justice system endure, there are high rates of recidivism, and many communities and criminal justice system officials are frustrated with the system's lack of effectiveness. Therefore, based on several decades experience, it appears clear that the types of initiatives described in this section cannot succeed in bringing about significant improvements in the effectiveness of justice services for Aboriginal people.

While they cannot be a substitute for more fundamental reforms, the types of initiatives described in this section can make an important contribution to improving the effectiveness of mainstream services provided that more fundamental reforms are also proceeded with. On their own, however, they will continue to have a limited impact in bringing about lasting or significant improvements.

2. Aboriginal Self-Determination In The Justice Field

Until quite recently, remarkably little attention had been directed to promoting Aboriginal involvement and control of justice programs in Canada, or to creating true partnerships involving Aboriginal and non-Aboriginal organizations and governments. Rather, the programs and policies developed by mainstream agencies were assumed to constitute the best possible approach for delivering services to all, including Aboriginal people. Various initiatives, such as those described previously, were then implemented to assist Aboriginal people to fit in, accept, or adjust to non-Aboriginal programs, and to the values and beliefs upon which they are based.

Over the past two decades, however, the failure of mainstream justice programs to effectively address the needs and aspirations of Aboriginal people has led to a good deal of interest in establishing Aboriginal programs that are run by and for Aboriginal people. There are now numerous examples of such programs, not only in the justice arena, but in such other areas as child and family services, alcohol and drug abuse services, recreation and community development programs, health care services, educational programming, child care and day care services, employment programs, economic development and many others (Hylton 1999).

In recent years, work on self-government has been significantly advanced by the Royal Commission on Aboriginal Peoples (1996). One of the Commission's principal findings relates to the importance of Aboriginal self-government. The Commission concludes that Aboriginal nations have a unique legal and historical right to govern themselves within the Canadian federation and this right derives from their status as peoples with an inherent right to freely determine their political status and pursue their economic, social and cultural goals. The long history and legacy of misguided colonialist attempts to impose external solutions and undermine Aboriginal societies, such as the residential school debacle, figured prominently in the Commission's thinking.

The central thrust of the Commission's recommendations revolved around the strongly related concepts of: 1) a *renewed relationship* between Aboriginal and non-Aboriginal peoples in Canada, 2) *self-determination* expressed in new structures of self-government, 3) *self-reliance* through restoration of a land base and economic development, and 4) *healing* to achieve vibrant communities and healthy individuals equipped to fulfil the responsibilities of citizenship.⁸

For the Commission, the principles of a renewed relationship would include: 1) *mutual recognition* — Aboriginal and non-Aboriginal people acknowledging and relating to one another as equals, co-existing side by side, and governing themselves according to their own laws and institutions, 2) *mutual respect* — “the quality of courtesy, consideration and esteem extended to people whose languages, cultures and ways differ from our own but who are valued fellow-members of the larger communities to which we all belong” (RCAP 1996; p. 682), 3) *sharing* — the reciprocity that characterized early relations between Aboriginal and non-Aboriginal people that has become unbalanced over time as Aboriginal people have been displaced from their traditional sources of wealth, and 4) *mutual responsibility* — Aboriginal peoples and Canada should seek to actualize a relationship as partners who have a duty to act responsibly towards one another and also towards the land they share.

More fundamental reforms involving Aboriginal control of program design and delivery have also begun to emerge in the justice field. While this is not the place to catalogue all of the initiatives now under way, some examples may be mentioned:

- Most provinces now offer an Aboriginal courtworker program. Although funded by government, most of these programs are delivered by Aboriginal organizations;
- Aboriginal Justices of the Peace provide services in several provinces and territories. These Justices may be appointed as part of the usual process in the jurisdiction, but several jurisdictions also have specialized programs;
- There are many examples of police forces and “peace keepers” operating under the jurisdiction of Aboriginal governments in a number of provinces — the Dakota-Ojibwa Tribal Council in Manitoba, the Blood Tribe in Alberta, the Mohawk Tribe in Ontario and Quebec, etc. At last count, there were some forty such formally constituted Aboriginal police forces, mostly in First Nations communities;
- Bands have used the by-law powers under Sections 81-83 of the Indian Act to enact a variety of by-laws governing local community affairs. Some have enacted an Aboriginal equivalent of the Criminal Code, that is, a code of conduct for the community. These by-laws, however, require the approval of the Minister of Indian Affairs and, except in one case (Spallumcheen), approval has not been given to establish formal Aboriginal justice institutions;
- Indian Bands have used Section 107 of the Indian Act to establish community courts. In Kahnawake and Akwesasne, for example, such courts have handled traffic and summary conviction offences since 1974. Some have suggested Section 107 courts could be used as a building blocks for establishing broader Aboriginal jurisdiction;
- Through the use of sentencing circles, elders panels, and similar mechanisms, some Aboriginal communities are exerting significant influence over the sentences issued by mainstream courts;
- Many Aboriginal communities operate diversion and alternative measures programs for both adult and young offenders. A well known example is the program in Hollow Water Manitoba that has been established to respond to widespread child sexual abuse in that community;

- Many Aboriginal communities have community justice committees that set justice priorities for the community and liaise with mainstream justice agencies. These committees have sometimes emerged in response to the policies or legislation of the mainstream justice system (e.g., the Young Offenders Act, First Nations Policing Policy, etc.), however, in other instances, they have emerged as a spontaneous response to community needs and priorities;
- Aboriginal organizations and governments are involved in providing a range of community and institutional correctional services. The Native Counselling Services Association of Alberta, for example, operates the Stan Daniels community correctional centre. A number of Aboriginal healing lodges are now supported by federal and provincial/territorial governments;
- Some Aboriginal organizations, such as Aboriginal Legal Services of Toronto, provide specialized legal services to Aboriginal people; and
- In the Yukon, British Columbia, Quebec, and Manitoba, Aboriginal people have been given broad powers to establish and operate their own justice systems pursuant to comprehensive self-government agreements. These Aboriginal justice systems are now at varying stages of development.

In the past, many Aboriginal justice initiatives were small, community-based undertakings confined to specific justice issues or specific geographic areas. Usually, they were based on ad hoc arrangements that operated outside any clear jurisdictional framework. Increasingly, however, the right of Aboriginal peoples to design and operate justice programs in conjunction with the Canadian justice system is being acknowledged, and Aboriginal justice programs are being formally recognized by the mainstream justice system. For example, Aboriginal peace keepers and police are now typically recognized in the policing legislation of the jurisdiction in which they operate. In a subsequent chapter, some of the specific self-governing initiatives that have developed in the justice sector will be described.

While much more needs to be known about the effectiveness and potential of these Aboriginal justice programs, all of the available evidence suggests that they are more successful than non-Aboriginal programs in overcoming the main obstacles to program effectiveness than “doing-for” type programs have typically encountered.

In particular, they appear much more successful than corresponding mainstream programs in:

- Incorporating principles, beliefs and traditions that are a part of Aboriginal culture;
- Attracting and retaining Aboriginal staff;
- Involving Aboriginal communities in the design and delivery of programs;
- Fostering greater acceptance by individual clients and Aboriginal communities;
- Creating economic benefits for Aboriginal communities;
- Extending services that were previously unavailable through the mainstream service system;

- Drawing attention to social and justice issues in Aboriginal communities and generating interest, involvement and support for community improvement;
- Providing levels of service that approach or equal levels of service available to non-Aboriginal communities;
- Reducing the need for the intervention of the state in the lives of Aboriginal people; and
- Providing services at a cost that is no more, and sometimes less, than the cost of corresponding mainstream programs.

Yet, it has also been demonstrated time and time again that these self-governing programs face a number of obstacles. These include:

- Financial resources provided to these programs are typically inadequate when compared with the resources made available to corresponding non-Aboriginal programs;
- The future of these programs is often in doubt. Budgets are subject to review as the programs are usually viewed by funders as “experimental” in nature;
- An absence of resources forces many agencies to focus all their energies on crisis management. Prevention and community development activities are not properly recognized or funded;
- Programs frequently have to operate without a proper infrastructure of personnel and program policies and procedures. Funders seldom recognize the importance of developing this infrastructure;
- Relationships between Aboriginal programs and the dominant non-Aboriginal programs are often characterized by uncertainty about respective roles and responsibilities;
- Typically, Aboriginal programs are confined to a particular geographic area. It is often uncertain how members of the Aboriginal community who are outside the geographic boundaries of the program ought to be served. This is a particular problem, for example, with off-reserve Indians; and
- Even programs that have operated successfully for some time usually do not enjoy the recognition and security that comes with funding, policy and legislative commitments.

Despite these limitations, however, the findings to date point to the positive potential of social programs that are operated by and for Aboriginal people. This approach has moved beyond isolated pilot projects, but, in many quarters, Aboriginal control of service delivery is still not accepted as a usual or proper approach for providing services to Aboriginal people. For this to occur, a much stronger commitment on the part of governments will be required. If there is a true desire to address crime issues involving members of the Aboriginal community, it is clear that successful strategies will have to be based on an acceptance of the principles of Aboriginal self-government.

Paralleling the emergence of programs and institutions under Aboriginal control, a number of different approaches to the organization and funding of Aboriginal initiatives have been evident over the years. These approaches reflect changing relations among Aboriginal and mainstream stakeholders and, in particular, they reflect an increasing recognition of Aboriginal authority over Aboriginal justice programs.

The trends in organization and funding are perhaps most evident at the federal level. In the last twenty years, dramatic changes have occurred in relations between First Nations and the federal agencies historically responsible for delivering services in Aboriginal communities (i.e., Health Canada and Indian Affairs). The organization and funding of services has evolved from a system completely managed by mainstream service providers and governments, to approaches that involve substantial and increasing Aboriginal control of program design and resource allocation. More and more, federal agencies fund and monitor services, but Aboriginal organizations and institutions design and provide the services. Again in the most recent Throne Speech,⁹ the federal government recognized the need for long-term partnerships with Aboriginal communities to deal with a variety of concerns and issues.

Conclusion

Evidence has been presented to show that the justice system in Canada does not deal with Aboriginal people appropriately. The clearest evidence is the increasingly disproportionate numbers of Aboriginal people who are incarcerated in Canadian prisons and in the frustrations experienced by Aboriginal victims and communities. In addition, systemic and overt discrimination have been found to pervade every aspect of the criminal justice process.

There is now a predictable repetitiveness to the findings and conclusions of Aboriginal justice task forces and commissions. The Alberta Task Force (1991), for example, examined some 22 such reports. Over and over again they found that the reports repeated recommendations from a 1975 federal-provincial conference dealing with Aboriginal people and the justice system (Solicitor General of Canada 1975). Recurring recommendations included: the need for more Aboriginal involvement in planning and delivery of services, more Aboriginal community responsibility for programs, mandatory cross-cultural education for staff working in the system, increased numbers of Aboriginal staff, the use of Aboriginal para-professionals, the provision of special assistance to Aboriginal offenders, the establishment of more Aboriginal advisory groups at all levels, increased recognition of Aboriginal culture and law, and more latitude for Aboriginal self-determination.

As the analysis in this chapter shows, these initiatives are worthwhile. But significant progress in addressing the underlying causes of social dysfunction only occur when strategies are based on a recognition of the Aboriginal right to be self-governing. There is no reason to believe that any solutions to crime that are imposed on Aboriginal people by the dominant society will have any better results than the imposed programs and policies of the past. The “doing for” approach has a long history in Canada, and it is a history fraught with high and growing expenditures, ineffective results, and resentment on the part of service providers and Aboriginal people. The better way involves Aboriginal people designing and implementing their own solutions. Funding and program arrangements, whether to deal with sex offenders, or any other social issue, must reflect this important principle.

Notes

1. A more thorough analysis of some of the data presented in this section will be found in Hylton (2000; 2001).
2. Correspondence from Heather Leonoff, Crown Counsel, dated March 11, 1999.
3. Personal correspondence, Saskatchewan Justice, January 19th, 2000.
4. Personal correspondence, Saskatchewan Justice, January 19th, 2000.
5. This section draws on a synthesis of inquiry reports prepared by the Royal Commission on Aboriginal Peoples (1993) and a commentary prepared by McMahon (1992).
6. Bill C-68 was introduced in the 1st session of the 36th parliament in March 1999. While it has not yet been passed, it was reintroduced again in 2001.
7. Some of what follows is adapted from Hylton (1995).
8. This synthesis draws on Brant-Castellano (1999).
9. See: Her Excellency The Right Honourable Adrienne Clarkson, Speech From the Throne to Open the First Session of the 37th Parliament of Canada, January 30th, 2001, Government of Canada.

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Chapter 3

Aboriginal Sexual Offending

Particularly over the past decade, the public and the criminal justice system have become increasingly concerned about the problem of sexual abuse. Canada is not unique in this regard. Indeed, over the past several years, there have been major national inquiries dealing with sexual offending issues in a number of other countries, including Australia and the United Kingdom (Crime Prevention Committee 1996;1995; MacLean 1999).

In this chapter, we present the evidence regarding the incidence of Aboriginal sexual offending in Canada. Trends over recent years for Canada as a whole are discussed in Appendix B. We begin by reviewing the definition of sexual offending.

What Is Sexual Offending?

In Canada, sexual offenders are generally identified according to one of three criteria. A sexual offender is: 1) a person who has been convicted of a sexual offense, 2) a person who has been convicted of a sexually motivated crime, or 3) a person who has admitted to a sexual offence, whether or not there has been a conviction. Depending on the specific context, one or a combination of these criteria may be used.¹

Sexual offences are crimes. Each offence, along with the evidence that is required to sustain a conviction and the associated range of penalties, is set out in the *Criminal Code*. Since the federal government has exclusive jurisdiction to enact criminal law, sexual offences are defined in precisely the same manner in every part of the country. Nonetheless, as will be discussed more fully later, some provinces and territories have enacted additional legislation in areas not covered by federal jurisdiction. Usually this legislation is intended to provide additional protection for victims of sexual crimes.

In the national statistical programs operated by Statistics Canada (i.e., the Uniform Crime Reporting or UCR program), sexual offenses are classified into two main categories for reporting purposes: sexual assaults and other sexual offences. Sexual assaults include what used to be referred to as rape, while other sexual offences include child molestation, as well as a number of other, less common, sexual offences. More specifically:

1. Sexual Assault. There are three categories of sexual assault in the Criminal Code. A Level 1 sexual assault involves the least physical injury to the victim. Level 2 sexual assault refers to a sexual assault involving a weapon, threats to use a weapon, or bodily harm. A Level 3 sexual assault is an aggravated assault that wounds, maims, disfigures or endangers the life of the victim.
2. Other Sexual Offences. Molestation of children is the most common type of offence in this category. These offences may include “sexual interference,” which refers to touching a child under 14 for a sexual purpose, or “invitation to sexual touching,” which includes convincing a child under

14 to touch his or her own body, or the body of another person, for a sexual purpose. Other offences include: sexual exploitation of a young person, anal intercourse, bestiality, exposing genitals to a child, living off the avails of child prostitution, attempting to obtain the sexual services of a child, incest, corrupting children, and indecent acts. There are also specific offences that forbid parents or guardians from procuring sexual services from a child and that prohibit owners or managers from permitting illicit child sexual activity to occur on their premises.

There have been a number of important changes to the laws governing sexual offending over the years. While the law is constantly evolving, a number of particularly significant changes that have occurred over the last 20 years may be mentioned:³

1. In 1983, the offences of rape, attempted rape and indecent assault were replaced with the three levels of sexual assault discussed above. These changes were intended to de-emphasize the sexual nature of the offences so that the violent and assaultive features of these crimes could be profiled. In this way, victims were encouraged to report incidents to the police and the police and courts were encouraged to handle these cases as they would other serious crimes. The intention was to increase the number of convictions and reduce the trauma to victims;
2. When passed in 1983, Canada's new sexual assault laws did not specifically define sexual assault. However, in 1987, in *R. v. Chase*, the Supreme Court ruled that sexual assault may be differentiated from common assault on the basis of the part of the body touched, the nature of the contact, the situation in which it occurred, the words or gestures accompanying the act, and the other circumstances surrounding the contact;
3. In 1991, in *R. v. Gayme*, the Supreme Court struck down provisions that prevented a defendant from introducing evidence regarding the complainant's sexual history. As a result, new "rape shield" legislation was introduced in 1992. This legislation set out criteria for determining when a complainant's sexual history could be introduced into evidence, and also defined "consent" for the purposes of the sexual assault laws. As a result, an accused's mistaken belief that a complainant had given consent could not be used as a defense in cases where the accused's belief stemmed from drunkenness, recklessness or willful blindness.
4. In 1995, in the case of *R. v. O'Connor*, the Supreme Court provided specific guidance regarding the release of counseling and other personal records of sexual assault victims. These laws were updated when Bill C-46 was passed by Parliament in 1997.
5. Although the sexual assault laws passed in 1983 applied whether the victim was a child or an adult, several new offences related to victims under 18 years of age were created in 1988. These new offences included sexual interference, invitation to sexual touching, sexual exploitation and incest.
6. In 1993, legislation was enacted that authorized the courts to order specific prohibitions for convicted sex offenders. As a result of this legislation, the courts can now order convicted sex offenders to stay away from parks or schools, and they can prohibit such offenders from occupying positions of trust with children.

Provincial and territorial governments have also instituted various laws and initiatives to deal with aspects of sexual offending that fall under their jurisdiction. For example, a number of provinces and territories have used their jurisdiction in the area of child welfare to respond to growing concerns about child prostitution. In Alberta, the government enacted the *Protection of Children Involved in Prostitution Act*. This law allows the authorities to take child prostitutes into protective custody and increases the options for prosecuting those who abuse children.

In addition to these legislative changes, many provincial and territorial Ministers of Justice have introduced policies to increase the number and success of prosecutions involving cases of family violence, including cases involving sexual offences. There has also been a major thrust to train police and prosecutors in conducting investigations involving allegations of family violence or sexual abuse. In part, these efforts have been in response to highly publicized cases where there has been a perception that perpetrators have “gotten off” because of technicalities.

Many jurisdictions now offer programs specifically to support victims and witnesses involved in cases of violence and sexual abuse. Overall, the main thrust of these programs is to reduce the trauma for victims, encourage reporting, and reduce obstacles to the successful prosecution of perpetrators.

These and other changes in the law and enforcement practices have occurred for a number of reasons: 1) to modernize the law so that it is more in keeping with contemporary values regarding inappropriate sexual behavior (for example, prior to 1983, it was not possible for a husband to be charged with rape), 2) to provide stronger penalties that more accurately reflect society’s disdain for inappropriate sexual behavior, 3) to respond to worrisome new forms of inappropriate sexual behavior (e.g., child prostitution and child pornography on the Internet), 4) to provide more explicit rules about the evidence and procedures to be used in prosecuting sexual offences, and 5) to reduce stigma and increase support for victims so that they are encouraged to report instances of sexual abuse to the authorities.

Aboriginal Voices Speak Out About The Incidence Of Sexual Abuse In Aboriginal Communities

An extensive literature search on Aboriginal sexual offending turned up many community needs assessments, community research projects, briefs that had been submitted to commissions and inquiries, project proposals, and copies of testimony where the problem of sexual abuse in Aboriginal communities had figured prominently. These documents are referenced throughout this chapter. In particular, it is evident that a number of organizations concerned about the welfare of Aboriginal women and children have been active in raising awareness about the issue for at least several decades. Despite this concern in some communities and among some organizations, however, surprisingly little systematic research has been carried out; little is known about the extent to which Aboriginal people are victims of sexual abuse and assault, and even less is known about the numbers, characteristics and needs of those involved in perpetrating these crimes.

What little systematic research is available about Aboriginal sexual offending has mostly been sponsored by criminal justice agencies, and particularly the correctional agencies that are responsible for the management and treatment of sex offenders. Chief among these are Solicitor General Canada and the Correctional Service of Canada. These organizations have a long history of involvement in sex offender research,

particularly research relating to risk prediction and treatment effectiveness. Over the past several years, some resources have been directed to examining specific issues pertaining to Aboriginal sexual offenders. However, even within the criminal justice system, Aboriginal sexual offending has only very recently come on to the “radar screen” in any significant manner. Fortunately, a number of research projects are currently underway that will help to shed more light on patterns of Aboriginal victimization and Aboriginal offending. These projects will be discussed at the end of the chapter.

A number of Aboriginal organizations, particularly those concerned about the rights and welfare of Aboriginal women and children, have been focusing attention on widespread physical and sexual abuse in some Aboriginal communities for a considerable time. As the Royal Commission On Aboriginal Peoples (1996, Vol. 3, p. 54) pointed out:

Aboriginal people perceive that the family as an institution is under severe stress from internal violence, which is both a symptom of stress and a cause of further distress. This message was communicated most powerfully by Aboriginal women and their organizations in our hearings, although men and young people expressed concern as well.

The extent of sexual offending is difficult to gauge. For example, in 1991, a landmark study of child sexual abuse in Inuit communities was completed on behalf of Pauktuutit, the Inuit Women’s Association of Canada. In this report, Kuptana (1991; p. 5) states:

Our research confirms that child sexual abuse is a problem in Inuit communities, however, it is difficult to accurately determine the extent of the problem. Some of the statistics gathered in the course of the research refer to confirmed cases of abuse, some to suspected cases or those under investigation, and others do not specify. Moreover, different agencies within the same community do not always agree on the number of child sexual abuse cases in that community. The greatest difficulty in determining the extent of child sexual abuse, however, arises from the fact that many, many abuses are never reported and there are no records of these abuses to be found anywhere. Many respondents to the Pauktuutit survey have indicated that many child sexual abuses are never brought out into the open. This is similar to the findings of other Canadian studies on child sexual abuse.

Pauktuutit has been active in bringing attention to issues of family violence and sexual abuse through a number of other reports and research projects (e.g., Pauktuutit 1991a; 1991b; 1989; Dumont-Smith and Sioui-Labelle 1991). Similarly, the Indian and Inuit Nurses Association of Canada (1987; 1990; 1991) has a long history of concern.

The concerns about high levels of incidence have been confirmed in other studies of Inuit communities, but it has also been pointed out that incidence rates seem to differ significantly from community to community, within the same community at different points in time, and among different segments of the same community (Griffiths et. al. 1995). There have also been other reports about sexual abuse in Aboriginal communities.

In papers for the Royal Commission on Aboriginal Peoples and the National Clearinghouse on Family Violence, LaRocque (1994) summarizes the results of several studies of victimization patterns among Aboriginal women and children:

- The Ontario Native Women's Association (1989) conducted a study in Northern Ontario and determined that 8 out of 10 women were abused. Of these, 57% had been sexually abused;
- A 1987 report by the Child Protection Centre of Winnipeg found that there was an "apparent epidemic of child sexual abuse on reserves;"
- On one reserve in Manitoba, it was reported that 30 adults were charged with having sexually abused 50 persons, many of them children; and
- In November 1992, the Women of the Metis Nation of Alberta organized an historic conference dealing specifically with sexual violence against Metis women. The interest shown by Metis women from across Canada was overwhelming. The stories told by the 150 participants confirmed that Metis women, no less than Indian women on some reserves, had been suffering from violence, including rape and child sexual abuse.

In a review of issues of particular concern to Aboriginal women, Knightingale (1991; p. 9) reports:

Anecdotal evidence suggests that violence affects the majority of Aboriginal women and children, whether First Nations, Metis or Inuit. Several regional and community studies on the incidence of violence against Aboriginal women and children have also indicated that over 80% of Aboriginal people have experienced or witnessed family violence, over 50% of Aboriginal women had been sexually abused, and that Aboriginal women were more likely to be killed by an intimate male partner than non-Aboriginal women. From these studies, and by Aboriginal women's accounts, violence in Aboriginal communities is a vast and overwhelming problem.

In a study of family violence in First Nations communities, Strategic Design and Production (1993) found that there was no systematic information available. Nonetheless, there had been various federally funded family violence and child sexual abuse initiatives beginning in the mid-1980s. Between 1988 and 1991, there had been 112 such projects.⁴ In the survey carried out by the research team, two-thirds of First Nations respondents said they knew a victim of abuse, and 40% of the respondents said abuse was a daily occurrence in their communities.

The Metis National Council (1992) has suggested that the extent of family violence and sexual violence among the Metis is not known. They have proposed further research on these issues. Nonetheless, the Council cites one study carried out in Alberta involving 60 people in and around Edmonton. In this sample, 70% of the Metis women reported being physically abused, 30% as children, 87% reported being emotionally abused, 40% as children, and 38% reported being sexually abused, 23% as children. Three quarters of the women knew someone close to them who had been physically abused by a spouse or other significant person, 80% knew someone who had been emotionally abused by a spouse or someone close to them, and 47% knew someone who had been sexually abused by a spouse or someone close to them.

Of the known cases of sexual abuse, one-quarter of the perpetrators were said to be relatives of the victim. In a fact sheet prepared by the government of Nova Scotia (2001), several additional studies relating to family violence and sexual abuse in Aboriginal communities are reviewed. Among the findings:

- In some Northern Aboriginal communities it is estimated that between 75% and 90% of women are abused and that 40% of children have been physically abused by a family member;
- Aboriginal women and children under 15 years of age are the most frequently abused;
- A NWT study found that 80% of Aboriginal girls and 50% of Aboriginal boys under eight years of age were sexually abused; and
- On some Aboriginal reserves, 100% of all Aboriginal children had been taken into temporary or permanent care at some point.

The Alliance of Five Research Centres on Violence (1999) has reported that 54% of girls under the age of 16 have experienced some form of unwanted sexual attention, another 24% have experienced rape or coercive sex, and 17% have experienced incest. For Aboriginal girls, the Alliance reports that 75% under the age of 18 have been sexually abused. 75% of Aboriginal victims of sex crimes are females under 18 years of age, 50% are under 14 and 25% are younger than 7.

In one London Ontario study (Women's Education and Research Foundation 1986), 71% of the urban sample and 48% of the reserve sample of Oneida women had experienced assault at the hands of current or past partners. In a non-random sample in Lethbridge (Wierzba et. al.1991), 77% of Aboriginal women reported being slapped, 64% had been hit, 54% had been punched and 16% reported being touched unwillingly and being forced into sex with partners.

In a study involving seven reserves in Northern Manitoba, Thomlinson et. al. (2000) report that 63% of a sample of 264 persons indicated they had been abused. Of these, 19% said they had been abused once, 22% said they had been abused weekly, 6% monthly, and 53% once in a while. Over 70% of the women and 50% of the men reported they had been abused. 76% said that some or all of their family members had experienced abuse.

McGillivray and Comaskey (2000) carried out a case study of 26 women who had been victims of violence in Winnipeg. The study revealed that the women had experienced thousands of incidents of physical, sexual and emotional violence in childhood and adulthood, initiated by well over 100 perpetrators.

The Aboriginal Peoples Survey, conducted by Statistics Canada in 1991 asked both on-reserve and off-reserve Aboriginal respondents about a number of social problems in their communities. Unemployment and alcohol/drug abuse were the most frequently reported problems. However, family violence, sexual abuse and rape were also frequently identified as concerns. The results (Table 3.1) indicate high rates among all Aboriginal identity populations, but especially among Inuit and on-reserve Indians.

Table 3.1
Social Problems Reported by Aboriginal Identity Populations
Age 15 and Over, 1991

	Family Violence	Sexual Abuse	Rape
Total Aboriginal Sample	39.2%	24.5%	15.0%
On-reserve Indians	44.1%	29.0%	16.4%
Off-reserve Indians	36.4%	21.8%	13.3%
Métis	39.0%	23.0%	14.6%
Inuit	43.5%	35.1%	25.0%

Source: Statistics Canada (1991)

In communities where programs to deal with sexual abuse have been started, for example in Hollow Water, Manitoba, there are often disclosures about widespread sexual abuse. In Canim Lake, British Columbia, for example, when offender and victim groups were set up in the community, seven offenders admitted to victimizing 277 victims, while seventeen victims disclosed they had been abused by 122 different offenders (Warhaft et. al. 1999).

A study in the Northwest Territories (Royal Commission 1996) found that 8 out of 10 girls under the age of eight had been victims of sexual abuse. In addition, 50% of boys the same age had also been sexually molested.

In their study, Bopp and Bopp (1998) note that approximately one half of females and one third of males have been victims of one or more sexual acts. In addition, they found that a very high percentage of victims are children, the majority of abusers are male, a majority of victims are abused by someone in their family or extended family, sometimes elders or medicine men are abusers, and incest tends to be multi-generational.

During its investigations, the Royal Commission on Aboriginal Peoples conducted four rounds of public hearings involving visits to 96 communities throughout Canada, 177 days of hearings, 2067 presentations, nearly 1000 written briefs, and the amassing of some 75,000 pages of transcript. A search of the public hearings data base yielded some findings regarding violence and sexual offending. Sexual abuse or assault was mentioned 388 times in presentations to the commission.

Sexual abuse or assault involving children was mentioned 157 times. Incest was mentioned 31 times. Violence was mentioned 1,673 times and family violence was mentioned 731 times.

Although family violence is widespread throughout Canadian society, the Royal Commission on Aboriginal Peoples (1996, Vol. 3, p. 57) has pointed out that violence in Aboriginal communities is distinctive for several reasons:

First, Aboriginal family violence is distinct in that it has invaded whole communities and cannot be considered a problem of a particular couple or an individual household. Second, the failure in family functioning can be traced in many cases to interventions of the state deliberately introduced to disrupt or displace the Aboriginal family. Third, violence within Aboriginal communities is fostered and sustained by a racist social environment that promulgates demeaning stereotypes of Aboriginal women and men and seeks to diminish their value as human beings and their right to be treated with dignity.

Findings with respect to the incidence of family violence and other forms of violence cannot be directly equated with the incidence of sexual abuse because many victims of violence are not victims of sexual abuse. Nonetheless, taken together, the evidence from Aboriginal organizations and communities strongly supports the view that both violence and sexual offending are serious problems in many Aboriginal communities. Where systematic studies have been carried out, they confirm that rates of violence and sexual offending in many Aboriginal communities are much higher than the corresponding rates in Canada generally.

Aboriginal Sexual Offences Reported To the Police

As discussed in Appendix B and elsewhere in this report, very few sexual offences are reported to the police. Nonetheless, relative to correctional data, policing statistics are a somewhat truer indication of crime volumes in the community because the attrition of cases that normally occurs through subsequent stages of justice system processing has not yet occurred. Unfortunately, however, policing statistics do not usually record whether victims or offenders are Aboriginal and, therefore, policing data is generally of limited utility for present purposes.

1. Uniform Crime Reports From Provincial and Territorial Jurisdictions

Some indication of higher crime and victimization rates for sexual offences in Aboriginal communities can be gleaned from Table B.2 presented in Appendix B. As the data in that table indicates, the rates of sexual offences reported to the police are highest in the jurisdictions that also have the highest proportions of Aboriginal people in the general population. This is true, for example, in Manitoba, Saskatchewan, the Yukon, the NWT and Nunavut.

While it would be a stretch to attribute the higher rates in Manitoba and Saskatchewan to the victimization of Aboriginal people (since Aboriginal people make up less than 12% of the general population in those two provinces), such an association is on safer grounds in the Territories, where the Aboriginal proportion of the population is much higher.

In the Yukon, for example, the Aboriginal proportion of the population is about 20%, while the sexual offence rate is about four times the national average. In the NWT, the proportion of the Aboriginal population was about 60% prior to the creation of Nunavut, while the sexual offence rate is about six times the national average. In Nunavut, it has been estimated that about 85% of the inhabitants are Aboriginal, while the sexual offence rate in that territory is about ten times the national average (Aboriginal Issues Branch 2001).

2. Kowalski's Examination Of First Nations Policing Statistics

Some limited research is available that provides a more direct measure of sexual offence reporting rates in Aboriginal communities. In particular, Kowalski (1996) has examined offences reported to a number of First Nations police forces across Canada.

For a number of years, First Nations police forces have been submitting reports to the national Uniform Crime Reporting system maintained by Statistics Canada. These reports are important since these First Nations forces are exclusively involved in providing policing services to First Nations communities. Therefore, an analyses of these data, and comparisons with corresponding data for non-Aboriginal jurisdictions, provides some insight into comparative incident levels of various types of offences. Using 1996 data, Kowalski (1996) carried out just such an analysis.

In Table 3.2, Kowalski's results for violent offences and for assaults are shown. These data show that violent offences and assaults make up a much larger proportion of the offences reported to the police in Aboriginal communities than they do in a comparison sample of police forces from small urban and rural communities. In particular, violent crimes constitute one in four offences reported to the police in First Nations communities, but only one in seven offences in rural communities and one in ten offences in small urban communities. With respect to assaults, the rates were about four times higher in First Nations communities than in small urban communities or rural communities.

Table 3.3 summarizes Kowalski's results with respect to sexual offences. The data indicate that sexual assaults were two to three times more likely to be reported in First Nations communities than in small urban or rural communities. With respect to other sexual offences, these were approximately four times more likely to occur in First Nations communities than in the comparison communities.

Table 3.2
Violent Crimes and Assaults Reported to
Police in First Nations, Small Urban and Rural Communities, 1996

Violent Crime as % of Total Criminal Code Offences

	First Nations Communities	Small Urban Communities	Rural Communities
Ontario	20	11	11
Quebec	23	7	8
Manitoba	36	11	20
Nova Scotia	26	13	15
Alberta	28	12	15
AVERAGE	26.6	10.8	13.8

Assault Rates (per 1,000 population)

	First Nations Communities	Small Urban Communities	Rural Communities
Ontario	252	89	77
Quebec	212	37	35
Manitoba	773	105	182
Nova Scotia	472	146	84
Alberta	346	208	98
AVERAGE	411	117	95

Source: Kowalski (1996)

Table 3.3
Sexual Assaults and Other Sexual Offences Reported to
Police in First Nations, Small Urban and Rural Communities, 1996 (rates per 10,000)

	Sexual Assaults		
	First Nations Communities	Small Urban Communities	Rural Communities
Ontario	25.1	9.6	11.2
Quebec	15.7	3.2	4.3
Manitoba	82.9	17.3	22.0
Nova Scotia	39.1	15.2	11.0
Alberta	36.4	30.9	13.6
AVERAGE	39.8	15.2	12.4

	Other Sexual Offences		
	First Nations Communities	Small Urban Communities	Rural Communities
Ontario	11.5	5.6	5.1
Quebec	6.7	1.0	1.5
Manitoba	22.0	1.3	1.4
Nova Scotia	0	1.2	0.6
Alberta	0	1.8	1.0
AVERAGE	8.0	2.2	1.9

Source: Kowalski (1996)

Other sexual offences mostly involve offences where the victims are children. While sexual assault rates are also higher in the First Nations community, other sexual offences are even more likely to occur relative to the comparison communities. In addition, while the Canada-wide ratio of sexual assaults to other sexual offences has generally been found to be 7 or 8 to 1, for the First Nations communities in this sample, the ratio was 5:1. For the comparison communities, the rates were 7:1 for small urban communities and 6:1 for the rural communities. These findings suggest that offences against children make up a larger proportion of sexual offences in First Nations communities.

Other key findings from Kowalski's analysis include the following: 1) the proportion of youth involved in reported violent crimes and sexual offences was similar in First Nations communities and in the comparison communities, 2) women were involved in a higher proportion of reported violent crimes in First Nations communities than in the comparison communities, 3) there is a wide divergence in reported rates of violence and sexual offences, not only among the First Nations communities included in the study, but in the other communities as well. For example, some communities have twice the reported level of violent offences than others, while sexual offence rates differ by a factor of 4 or 5 or more to 1. These differences may reflect incidence levels of these offences in the community, or reporting or enforcement practices or, in all likelihood, a combination of these factors.

Kowalski's results need to be interpreted with considerable caution. First of all, as previously mentioned, reporting rates often have little to do with the incidence of crime in the community, since there is extensive under-reporting, particularly of sexual offences. Thus, if members of the First Nations communities in Kowalski's study were even slightly more likely to report these incidents to the police, perhaps because they had a heightened sense of trust or confidence in the ability of their police force to address the issue, this could more than account for the observed differences. In other words, the differences could be due to differences in reporting rather than differences in incidence. Secondly, very few First Nations communities were examined in Kowalski's study: 24 in Quebec and 5 in Ontario, but only one in each of Manitoba, Nova Scotia and Alberta. Therefore, it is not possible to generalize the findings to other First Nations communities, or to Inuit or Metis communities.

3. A Further Examination Of First Nations Policing Data

A further analysis of First Nations policing statistics was undertaken specifically for this review. Through the Canadian Centre for Justice Statistics, Uniform Crime Reporting data for 33 First Nations police forces were obtained for each year from 1989 to 1999. As discussed more fully below, not all the forces reported in each of these years. Nonetheless, the data allowed us to examine some of the issues addressed by Kowalski using more recent data. In addition, having longitudinal data over a period of eleven years allowed us to examine trends in reporting. This is important since it permitted us to gauge whether or not the problem of sexual offending is becoming more serious in First Nations communities, at least from the perspective of reported incidents. In addition, we were able to compare trends in reporting to First Nations police forces with corresponding trends in reporting to non-Aboriginal police forces throughout Canada.

As mentioned, data for 33 First Nations police forces were obtained: 1 in Nova Scotia, 16 in Quebec, 7 in Ontario, 2 in Manitoba, 3 in Alberta, and 4 in British Columbia. Not every force reported in each of the years we examined. In fact, most of the First Nations forces did not begin reporting until 1996.

Specifically, 2 forces reported in 1989, 3 reported in each year between 1990 and 1994, 7 forces reported in 1995, 24 reported in 1996, 18 reported in 1997, 28 reported in 1998, and 32 reported in 1999.

Statistics Canada did not release figures if they were too small to be reliable. Thus, data for earlier years is based on the reports of only a few forces and, even in the later years, data from some forces was omitted. In addition, even in years where a police force reported, some estimates were used because data was missing for part of the year. For this reason, the rates of occurrence, rather than the number of incidents, are the focus of the discussion that follows. Because of the small populations served by First Nations police forces in this analysis (the average community size was less than 2,400 in 1999), minimal changes in the number of reported incidents make very large differences in the rates per 100,000 population. This helps to explain some of the wide observed differences in the rates between communities, as well as the wide differences in the same community from year to year.

It is also worth recalling that reported incidence does not measure victimization. Moreover, caution is required in making comparisons over time or between communities, since differences could result from varying reporting or enforcement practices. Thus, these results should be regarded as only one more tool for gaining some perspective on the problem of Aboriginal sexual offending.

One more caution is warranted. Solicitor General Canada (2001) has estimated that some 70% of Aboriginal offenders under federal supervision either did not reside in reserve communities prior to their imprisonment, or if they did, they did not commit their offences on reserves. Since it appears that the vast majority of offences committed by Aboriginal people would not have been reported to First Nations police forces, the examination that follows focuses on only one small dimension of a much larger picture.

Table 3.4 summarizes the number of incidents and rates of sexual assaults and other sexual offences reported to the sample of First Nations police forces. While the rates vary considerably from year to year, in every year, they are substantially higher than the Canadian rates reported in Appendix B. It will be recalled that reported rates of sexual assault in Canada have decreased by 20% over the past several years. The rate stood at 78 incidents per 100,000 population in 1999. In contrast, the rate of sexual assault reported to the First Nations police forces in this sample averaged 255 incidents per 100,000 over the past eleven years, about three times the current national rate. In some years, the rate has been considerably higher. In the most recent year, for example, First Nations police in this sample reported sexual offenses at a rate five times the national average. In addition, unlike the Canada-wide rates, there is no clear downward trend in reported incidents to the First Nations police.

With respect to “other sexual offences”, which usually involve offences against children, it will be recalled that the Canadian rate has been hovering between 11 and 12 incidents per 100,000 population for the past five years. The rate in the First Nations sample averaged 14 per 100,000 over the eleven year period, about 20% higher than the 11.4 average rate in Canada over the past five years. However, the average rate of reported incidents to First Nations police forces is low because there were no reported incidents in the early years when there were very few First Nations police forces, and fewer still who were reporting to the Uniform Crime Reporting program. Over the past five years, however, the First Nations rate has averaged 31.4, about three times the Canadian rate.

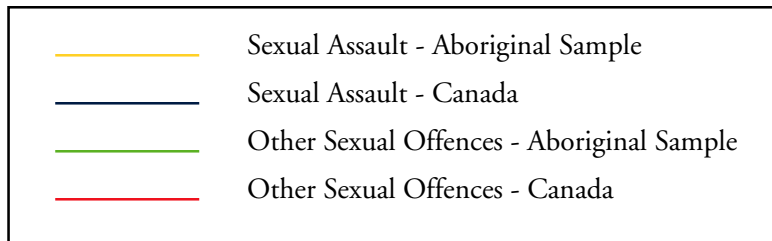
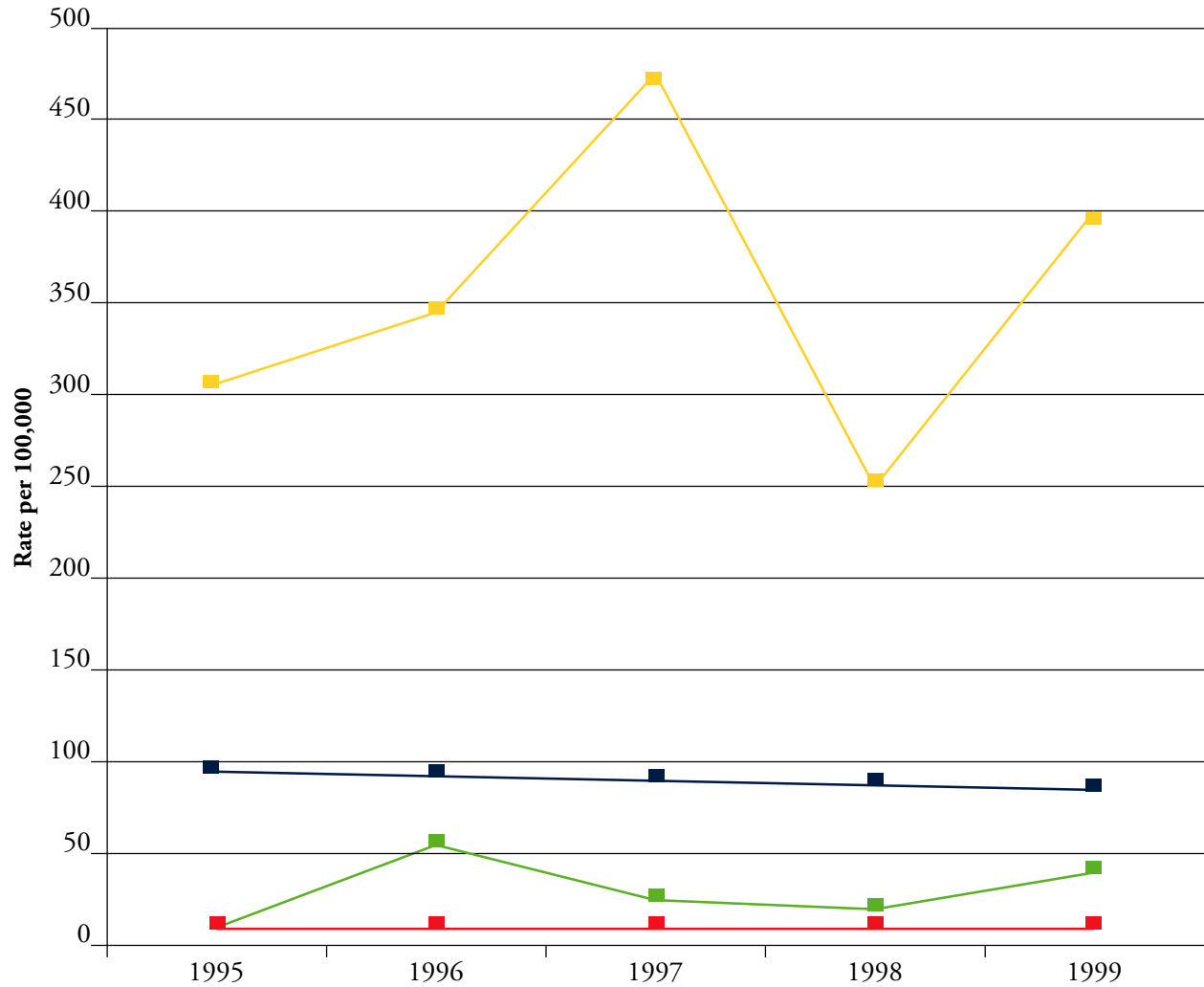
Table 3.4
Sexual Offences Reported to
Thirty Three First Nations Police Forces (1989 - 1999)

	Sexual Assaults		Other Sex Offences		Total	
	# of Incidents	Rate	# of Incidents	Rate	# of Incidents	Rate
1989	5	70	0	0	5	70
1990	10	58	0	0	10	58
1991	24	172	0	0	24	172
1992	40	288	0	0	40	288
1993	33	237	0	0	33	237
1994	34	199	0	0	34	199
1995	86	312	4	15	90	327
1996	151	343	25	57	176	400
1997	209	474	14	32	223	506
1998	174	253	15	22	189	275
1999	301	403	23	31	324	434
Average		255		14		270

Source: Customized data set generated by the Canadian Centre for Justice Statistics.
Numbers may not add due to rounding.

Graph 1

**Sexual Offences Reported to the Police,
Canada and First Nations Sample (1995 - 1999)**



The trends for reported sexual assaults and other sexual offences for Canada as a whole and for the First Nations police forces in this sample are summarized in the accompanying graph. Data for the past five years is presented. The chart indicates much higher reported rates of sexual offences in the First Nations sample. Moreover, unlike the Canadian rates, particularly for sexual assault, there does not appear to be any downward trend in reported sexual incidents in the First Nations sample.

Several other findings from the analysis of data from the First Nations police forces may be mentioned:

- In Canada, sexual assaults outnumber other sexual offences by 7 or 8 to one. While the rate of other sexual offences in the First Nations sample is higher than the Canadian rate, other sexual offences are a smaller proportion of the sexual offences reported to the police. Over the eleven year period, the ratio in the First Nations sample was 18 to 1, while in the past five years, the ratio was nearly 12 to 1. There has been speculation (e.g., Kuptana 1991) that sexual offences against Aboriginal children are even less likely to be reported to the police than offences involving other Canadian children. However, these ratios also likely reflect the fact that sexual assaults are much more likely to occur in these Aboriginal communities;
- In Canada, about 5 adults are charged with a sexual offence for every young offender charged. In the First Nations sample, the proportion is similar at 6:1 (Table 3.5)

Table 3.5
Age and Gender of Persons Charged
with Sexual Offences Reported to First Nations Police Forces

Persons Charged	Sexual Assaults		Other Sex Offences		Total	
	#	%	#	%	#	%
Adult Males	379	81.2	29	67.4	408	80.6
Adult Females	24	5.2	2	4.7	26	5.1
Male Youth	47	10.2	12	27.9	59	11.7
Female Youth	13	2.8	0	0	13	2.6
TOTAL	463	91.5	43	8.5	506	100

Source: Customized data set generated by the Canadian Centre for Justice Statistics.
Numbers may not add due to rounding.

- In Canada, 98% of those charged with a sexual offence are male, and 2% are female, although females make up a larger proportion of the young offenders charged. In the First Nations sample, 92.3% of those charged were male. Among young offenders, the ratio of men to women charged was 4.5:1 compared to 27:1 for Canada as a whole. These findings suggest that the problem of sexual offending may be much more prevalent among Aboriginal women than among non-Aboriginal women (Table 3.5):
- In Canada, 8.2% of violent crimes and 1% of all criminal code incidents committed by adults and reported to the police are sexual offences. Among the First Nations sample, 7.5% of violent crimes and 1.9% of all Criminal Code incidents are sexual offences;
- In Canada, 97% of sexual assault charges are level 1, the kind that involve the least physical injury to the victim. The remaining 3% are more serious charges. In the First Nations sample, 94% of charges involved a level 1 assault, while 6% involved level 2 or 3 assaults. There were proportionately twice as many serious assaults in the First Nations sample. It is not clear whether this difference reflects more serious offences, different charging practices, or both; and
- Among the sexual offences reported to the First Nations police in this sample, 79% were cleared by charge and 31% were cleared otherwise. In Canada, about 50% of charges relating to sexual offences are either stayed or withdrawn. Further research is required to determine if charging and prosecuting patterns for offences dealt with by First Nations police differ from those in Canada generally.

4. Other Research On Violence In Aboriginal Communities

The analysis of First Nations policing data that has been described in this chapter provides evidence that there are high rates of violent crime and sexual abuse in many Aboriginal communities. These findings are confirmed in many other studies. Some of these are briefly summarized in this section.

Wood and Griffiths (1999) have reported that the rates of violent crime and property crime in Aboriginal communities and in Aboriginal populations are very high, particularly in comparison with the rates for Canada generally. Moreover, these researchers found there was considerable variation in official crime rates between Aboriginal communities and within different segments of the same communities.

The Aboriginal Issues Branch of the Correctional Service of Canada (2001) has noted that between 1988 and 1996, the leading cause of death among registered Indians in Canada was injury and poisoning. While injuries include motor vehicle accidents, suicides and drownings, experts also believe the high rates of injuries also reflect levels of violence in some communities. For example, in a study of injury rates between 1979 and 1988 carried out by the Medical Services Branch of Health Canada (1988), it was found that First Nations deaths by injury were much more common than in Canada generally. For males, the percentages were 27.6% vs. 9.7%, while for females, the corresponding percentages were 15.5% vs. 6.4%. Interestingly, while the most recent data showed a decline in deaths due to injury for Canada as a whole, for First Nations men and women, the percentages were higher than the averages from previous years.

The Royal Commission on Aboriginal Peoples (1996) reported that many Aboriginal people, particularly Aboriginal women, migrate to cities from rural and remote Aboriginal communities to escape violence. Nonetheless, even in urban centres, the Commission found that Aboriginal people were much more likely to be victims of violence than other Canadians.

In a Saskatchewan study, assaults and homicides committed by Indian people in Saskatchewan made up 26% of all major offences, while sexual assaults also made up 26%. For Metis, corresponding percentages were 22% and 17%, while for Inuit, the corresponding percentages were 28% and 43%. Within Nunavut and the NWT, assaults and homicides committed by Inuit make up 18% of all major offences, while sexual assaults make up 48%.

On a national basis, the Centre reports that sexual assaults are 21% of the major offences committed by Indians, 13% for Metis and 53% for Inuit (National Crime Prevention Council 2001).

The National Crime Prevention Centre (2001) has also reported that the majority of Aboriginal people interviewed in a survey of four large Canadian cities reported sustained exposure to abuse as children. Some 88% had been victims of violence either as children or adults. Domestic violence was found to be up to five times higher on reserves. Such findings have also been confirmed in many other studies (e.g., Proulx and Perrault 2000).

In another Saskatchewan study, 42% of victims of violent crime in Prince Albert and Regina were Aboriginal victims. However, only 10% of the population in these two cities was Aboriginal (Quann and Trevethan 2000).

Many non-Aboriginal organizations have also completed studies of family violence in Aboriginal communities, often in conjunction with Aboriginal communities or organizations (e.g., Canadian Panel on Violence Against Women 1993 ; Frank 1992; Canadian Council on Social Development 1991; Canadian Psychiatric Association 1987). Without exception, these studies have confirmed that while there are marked differences between communities, the rates of violence and sexual abuse in Aboriginal communities are much higher than in Canada generally.

Aboriginal Sexual Offenders in Correctional Systems

In Appendix B, the limitations of official data from criminal justice system agencies is discussed. While these limitations will not be repeated here, it is worth remembering that as few as one in one hundred violent offenders end up being imprisoned, and the number of sexual offenders could be even smaller. Therefore, any data from criminal justice system agencies seriously under-estimates the total volume of crime, and it also likely distorts, in a variety of unknown ways, the true nature of the offences that are committed and the characteristics of the offenders and victims involved. Therefore, a good deal of caution is required. Nonetheless, official statistics from criminal justice system agencies confirm what Aboriginal organizations and communities are saying about the high prevalence of sexual abuse.

1. The Number of Aboriginal Sex Offenders in the Federal Correctional System

A number of studies carried out by the Correctional Service of Canada over the years shed some light on patterns of Aboriginal incarceration for sexual offending. For example:

1. Blanchette (1996) found that Aboriginal sexual offenders were highly over-represented among inmates in the federal correctional system at the end of 1995. Of those Aboriginal offenders serving over two years in custody, 40% were sex offenders;
2. Motiuk and Belcourt (1998) found that Aboriginal inmates made up 13.2% of the population in federal institutions at the end of 1997, but 19% of the sex offenders;
3. Johnston (2000) also carried out a survey of federal offenders. In a sample of Aboriginal offenders admitted from the Northern regions of Canada, 36% were sex offenders. Among the Aboriginal sex offenders, 56.3% were Inuit, 14.1% were Metis, 9.4% were Dene, 4.7% were Chippewan, 3.1% were Gwich'in, and 12.5% were from other or mixed Aboriginal ancestries. Over half the Aboriginal sample had a criminal history that included at least one conviction for a sexual offence;
4. In their survey, Motiuk and Nafekh (2000) found that Aboriginal offenders in federal institutions were even more disproportionately represented among sex offenders than among inmates generally. While Aboriginal inmates made up 16.8% of the general population, they were 22.7% of the sex offenders. A more specific breakdown by Aboriginal ancestry was also available. Indians were 11.6% of the institutional population, but 15.7% of sex offenders. Inuit made up 1% of the offender population, but 3.4% of the sex offenders. The Metis, in contrast, were 4.2% of the general population, but 3.6% of the sex offenders. Non-Aboriginal inmates made up 83.2% of the offender population, and 77.3 of the sex offenders;
5. Finn et. al. (1999) found that 10% of Aboriginal offenders under federal jurisdiction had committed a serious assault whereas this was true for only 2% of non-Aboriginal offenders. Whereas 20% of Aboriginal offenders had committed a sexual assault, this was true of only 12% of non-Aboriginal offenders;
6. The Aboriginal Issues Branch (2001) of CSC has recently reported that of Aboriginal people under federal jurisdiction, 71% are Indian, 25% are Metis and 4% are Inuit. While 26% of sexual offenders are Aboriginal, Aboriginal people make up 20% of the overall population. 20% of Aboriginal offenders and 12% of other offenders have committed a sexual offence.

A tabular presentation of some of Motiuk and Nafekh (2000) results clearly shows that the proportion of Aboriginal people under jurisdiction of the federal correctional system has been increasing over the past five years. As Table 3.6 indicates, Aboriginal sex offenders were 16.5% of all federal sex offenders in 1994, but they made up 20% of sex offenders in 1999, a 20% increase in proportion over the five years. However, the proportion of Aboriginal offenders in the federal system is increasing for all offence types – from 10.5% of all offenders in 1994 to 14.4% in 1999, a 37% increase. Thus, while the number of Aboriginal sex offenders under federal supervision is increasing, the number is not increasing as rapidly as one might expect given the general increase in Aboriginal offenders in the federal system.

Another way to examine the data in Table 3.6 is to focus on the number of sex offenders under federal jurisdiction. As discussed in Appendix B, the number of sexual offences reported to the police has been declining. As might be expected, the number of sex offenders under federal jurisdiction has also been declining for the past four years. In fact, since 1994, there has been a 4.9% decline in the total sex offender population, while the sex offender population in institutions has declined by 10%. Aboriginal sex offenders, however, have made up an increasing proportion of these declining numbers. The result is that even though the total number of sex offenders has declined, the number of Aboriginal sex offenders has not. Over the past four years, the number of Aboriginal sex offenders has been hovering between 700 and 750.

Table 3.6
Sexual Offenders Under Federal Jurisdiction* (1994-1999)

	Sex Offenders		Percent		All Offenders	
	Number Non-Abo.	Aboriginal	Non-Abo.	Aboriginal	% Non- Aboriginal	% Aboriginal
1994	3,748	618	83.5	16.5	89.5	10.5
1995	3,875	639	83.5	16.5	89.1	10.9
1996	4,041	719	82.2	17.8	88.0	12.0
1997	3,914	744	81.0	19.0	86.8	13.2
1998	3,676	732	80.1	19.9	86.0	14.0
1999	3,564	713	80.0	20.0	85.6	14.4

Source: Motiuk and Nafekh (2000). * Studies undertaken by the CSC have determined that the actual number of sex offenders is about 17% higher than the number recorded by CSC's Offender Management System. Therefore, while the proportions would not change, the actual number of sex offenders is likely 17% higher than recorded in this table.

The latest data available about sex offenders under federal jurisdiction has been provided by Sharon Williams, the Corporate Advisor for sex offender programs at the Correctional Service of Canada.⁵ A November 2000 snapshot completed by Williams (Table 3.7) indicates that there were approximately 778 Aboriginal sex offenders under federal jurisdiction.⁶

Table 3.7
Aboriginal and Non-Aboriginal Sexual Offenders Under Federal Jurisdiction*
(November 2000)

	Total Offenders	In Institutions	In the Community
1. Aboriginal			
Atlantic	22	13	9
Quebec	39	30	9
Ontario	101	72	29
Prairie	403	263	140
Pacific	100	70	25
TOTAL	665	448	212
2. Non-Aboriginal	2,435	1,582	858
3. Total	3,100	2,030	1,070

Source: Williams (personal correspondence). * As in the previous table, federal studies have determined that the actual number of sex offenders is about 17% higher than the number recorded by CSC's Offender Management System. Therefore, while the proportions would not change, actual numbers of sex offenders are likely 17% higher than recorded in this table.

The Aboriginal sex offenders in Williams survey made up just over one-fifth of the sex offenders under federal jurisdiction at that time. The proportion of offenders in institutions was about the same for both Aboriginal and non-Aboriginal populations; for both groups, there were two institutionalized offenders for every offender in the community. It is also noteworthy that two-thirds of Aboriginal sex offenders were under the jurisdiction of CSC's Prairie Region.

A breakdown of more specific Aboriginal origins has been provided by Motiuk and Nafekh (2000). Based on a year end review of offenders under federal supervision in 1998, the proportions of Indian, Metis and Inuit sex offenders were determined (Table 3.8).

Table 3.8
Aboriginal Sex Offenders Under Federal Supervision by Aboriginal Ancestry
(1998)

	Institutional	Conditional Release
Aboriginal		
Indian	15.7%	13.2%
Métis	3.6%	3.9%
Inuit	3.4%	3.4%
TOTAL	22.7%	20.4%
Non-Aboriginal	77.3%	79.6%

Source: Motiuk and Nafekh (2000)

2. Aboriginal Sexual Offenders in Provincial and Territorial Correctional Systems

Provincial and territorial correctional systems generally don't have as much information as the federal system about the offenders under their supervision. There are several related reasons for this: 1) many offenders serving time in provincial and territorial correctional facilities are incarcerated for brief periods so there is often little point collecting the type of detailed background information that the federal system uses for classification and programming purposes, 2) provincial and territorial jurisdictions, especially the smaller jurisdictions, generally have not developed the type of sophisticated information management systems that are available federally for recording inmate histories and characteristics, and 3) there has been a stronger tradition of research within the federal correctional system that is not paralleled in most provincial and territorial systems; a considerable body of research on federal offenders has been produced by a large in-house research staff, as well as by academics and external consultants.

While provincial and territorial information is limited, some data is available. The results of a 1996 snapshot reported by the Aboriginal Issues Branch (2001), indicates that 8% of all Aboriginal inmates were incarcerated for sexual assault, compared to 6% for non-Aboriginal offenders. Since the snapshot captured 23,494 provincial and territorial offenders, and 18% of them were Aboriginal (Statistics Canada 1999), it can be estimated that there were approximately 340 Aboriginal sex offenders and approximately 1150 non-Aboriginal sex offenders in provincial/territorial custody.

In addition, however, since only 57% of sex offenders receive a sentence of imprisonment, while 43% receive probation or some other disposition, the actual number of Aboriginal offenders under provincial/territorial jurisdiction at any one time is likely closer to 500.

In terms of the experience with Aboriginal sex offenders in specific jurisdictions, the following information was obtained:

- Manitoba. On March 13, 2001, a snapshot of Aboriginal people in the custody of the Manitoba correctional system was completed for this review. The snapshot revealed there were 113 Aboriginal people charged or convicted of a sex offence on that day (Coles 2001).⁷ Of these, 103 were adults, and 10 were young people. Fifty Aboriginal inmates (44%) were charged but not convicted, while the remaining 63 had been sentenced for a sex offence. On average, the sentence length for adult Aboriginal sex offenders was 394 days, but there was significant variation in sentence lengths (the standard deviation was 264 days). Although limited information about the characteristics of those charged or sentenced was collected, the available information indicates that these offenders displayed many of the socio-economic, family and other characteristics of Aboriginal offenders generally. Few (31%) were in stable marital or common law relationships, most (74%) were unemployed prior to their incarceration, for 26% of the offenders, the maximum education attained was elementary school, and substance abuse problems were reported in 18% of cases, while drug abuse problems were reported in 17% of cases.
- Saskatchewan. Data regarding sex offender admissions were obtained from Saskatchewan Justice for the four years from 1996 to 1999 (Nasim 2001).⁸ The data indicate that during this four year period, 576 offenders out of 14,514 (4%) who were admitted to provincial correctional centers for Criminal Code violations had been convicted of sex offences. There were 468 admissions for sexual assault and 108 for other sexual offences. Of these offenders, 55% were First Nations, 11% were Metis, and 34% were non-Aboriginal. These were approximately the same proportions as for Criminal Code admissions generally. Whereas one in four non-Aboriginal sex offenders had committed “other” sexual offences, offences which usually involve children, only one in five Aboriginal sex offenders had committed “other” offences. Whereas the average sentence for a Criminal Code admission other than sex offences was 230 days, the average for sexual assault admissions was 916 days. For “other” sexual offences, it was 553 days. Overall, sentence lengths for First Nations, Metis and other offenders appeared to be similar.
- Nunavut. Recently, the Nunavut Corrections Planning Committee (1999; Evans et. al. 1998), developed a plan for correctional services in Nunavut. In assessing the needs in Nunavut, the report points out that the NWT and Nunavut have the highest crime rates in Canada and that an increasing proportion of crimes are violent. While incarceration rates are similar to other parts of Canada, offenders in Nunavut are more likely to be incarcerated if they have committed a violent offence. Over half of the sentenced admissions in Nunavut are for violent offences, and 72% of the correctional centre population in Nunavut has committed a violent offence. This compares with 38% for provincial prison populations in Canada.

The Committee identifies a number of needs of Nunavut inmates that increase the likelihood they will recidivate. These needs relate to substance abuse, previous convictions and imprisonment,

criminal associates, unemployment and low educational attainment. Many inmates, according to the report, have also experienced dysfunctional family life, early exposure to violence and other forms of abuse, Fetal Alcohol Syndrome and Fetal Alcohol Effect, learning disabilities, inability to adapt to school environments, lack of social skills, poverty, and despair.

The Committee's report identifies the need to develop a core treatment and rehabilitation program within Nunavut corrections that specifically focuses on sexual offending. The report points out that, at present, limited programming is provided at the Baffin Correctional Centre. The Committee's recommendations call for the develop of one or more program modules that would provide culturally relevant relapse prevention programs in conjunction with Northern communities.

Although we did not approach every provincial and territorial jurisdiction, we did approach some others that were unable to provide any statistical information about Aboriginal sexual offending. These included jurisdictions that are known to have high rates of Aboriginal over-representation.

These findings suggest the challenge of providing programs and services for Aboriginal sexual offenders is no less daunting within provincial/territorial correctional systems than in the federal system. In fact, because many offenders are given community dispositions or short prison sentences, the opportunities available to provincial and territorial correctional systems to effectively deal with Aboriginal sexual offending are quite limited.

3. The Characteristics Of Aboriginal Sex Offenders

A number of studies have examined various demographic and other characteristics of Aboriginal offenders and Aboriginal sexual offenders to assess program needs, explore etiology, and determine whether differences exist between Aboriginal and non-Aboriginal offenders who have committed similar offences. The findings from these types of studies are amazingly consistent and, therefore, only a few will be reviewed below.

In his analysis of Aboriginal sex offenders in the Native Clan's Forensic Behavioral Management Clinic in Winnipeg, Ellerby (1994) found that Aboriginal sex offenders were more likely than non-Aboriginal sex offenders to exhibit the following:

- Issues associated with abandonment, displacement, and racism;
- Issues associated with an absence of or confusion about personal identity;
- Chronic exposure and history of maltreatment, including verbal, physical, sexual, emotional and psychological maltreatment;
- Exposure to poverty and death due to illness, suicide and violence;
- Deficits in education, employment skills, financial position and social supports;
- Longer and more violent records of offending; and

- Histories of more aggressive sexual behaviors.

For all of these reasons, Ellerby found that the Aboriginal sex offenders at his clinic were more disadvantaged. As a result, treatment and successful reintegration were more challenging. This was particularly the case, as often happened, when Aboriginal offenders from rural or remote areas were released into the community with insufficient social supports and follow-up care.

In her study, Blanchette (1996) found that Aboriginal sex offenders were more likely to have had problems with alcohol or drugs. However, the locations of their crime and the characteristics of their victims also differed. Aboriginal sex offenders often committed their offences in Aboriginal communities, and almost all of their sexual offences were committed against members of their immediate or extended family.

In his review of case histories, Johnston (2000) found that both Aboriginal and non-Aboriginal sex offenders showed a pattern of alcohol/drug abuse and behavioral problems. Sex offenders were also more likely to be from families where there had been parental absences, foster home and other substitute care arrangements, poverty, and physical and sexual abuse. A history of alcohol and drug problems among many Aboriginal offenders has also been identified in other studies (e.g., La Prairie 1995; 1996).

In a 1997 sample of Aboriginal federal inmates, 15% reported having attended residential schools. Aboriginal inmates were also more likely to report family and personal histories involving suicide, suicide attempts and self-injury, as well as employment and education deficits (Motiuk 2000).

In 1996, LaPrairie surveyed 142 correctional personnel as part of a larger review of Aboriginal corrections issues. According to those surveyed (p. 36):

the main similarities between aboriginal and non-aboriginal offenders are: drug and alcohol addiction, poor upbringing/poverty, abuse and violence in lives, type of offences committed, and lack of education. The main differences between aboriginal and non-aboriginal offenders were cultural (including shyness), degree of family and personal problems (such as addictions to alcohol) and entrenchment in poverty.

LaPrairie notes that there were also considerable differences among Aboriginal offenders, including: 1) cultural factors (adherence to traditional language and beliefs, identification with specific Aboriginal nations, etc.), 2) family background, 3) location of origin (southern, vs. northern, urban vs. rural or remote) and the related ability to adjust to the institutional regime.

In LaPrairie's view, the characteristics of Aboriginal offenders are similar to those of the majority of people who go to prison and, for treatment and programming purposes, she believes the similarities between groups of offenders may be greater than the differences. In particular, she contends that the attitudes, peer group support, and personality factors that contribute to the commission of crimes are similar for both Aboriginal and non-Aboriginal offenders, and are shaped by family background, poverty, school experiences, exposure to violence, and isolation from opportunities, options and environments that shape pro-social attitudes.

However, she points out that Aboriginal and non-Aboriginal offenders are often different in terms of family background, as well as in terms of geographic and cultural factors.

The National Crime Prevention Centre (1995) also found that Aboriginal inmates often more disadvantaged than a comparison group of non-Aboriginal offenders. Alcohol use was more common (76% vs. 65%), Aboriginal offenders had less education (20% had grade 10 or more vs. 30% for non-Aboriginal offenders), and fewer were employed at the time of their offense (17% vs. 30%). Only 22.5% of Aboriginal offenders reported any type of vocational training, and two-thirds had no previous skilled employment experience. A high incidence of family violence, sexual assault and incest among Aboriginal offenders was also noted.

Although the types of findings reported above have been very consistent across many other studies, the interpretation of these findings is made more difficult because the characteristics of Aboriginal offenders are similar to the characteristics of many Aboriginal people living in some Aboriginal communities. Therefore, it is not at all clear that the identified characteristics effectively distinguish Aboriginal people who offend from those who do not. For example, in 1995, LaPrairie studied the characteristics of Aboriginal people living in the inner cores of four large Canadian cities. Her research revealed:

- Three-quarters of all persons interviewed had suffered childhood abuse;
- Among these, one-quarter had experienced abuse “of the most severe kind;”
- For most of the people interviewed, abuse and violence were facts of childhood and adult life;
- Many were experiencing a high incidence of current instability in home and family life;
- Many were chronically transient, moving around a great deal;
- Many experienced severe or moderate problems in dealing with their own consumption of alcohol;
- Many have few skills and little formal education;
- Many experienced chronic unemployment;
- Aboriginal people were subjected to victimization more than other urban people; and
- Many lacked any connection to stable influences.

These types of findings have also been reported by the Royal Commission (1996) and many other researchers. These findings clearly suggest that Aboriginal people who become involved in the justice system, like Aboriginal people in Canada generally, have often been severely disadvantaged. This is reflected in socio-economic deprivation and all the problems that poverty brings – unemployment, family disruption, exposure to crime and violence, and abuse of substances, to name a few.

Conclusion

All of the available evidence suggests that rates of violence and sexual offending in many Aboriginal communities are substantially higher than corresponding rates for Canada as a whole. While precise figures are not available, it is reasonable to conclude from the available information that overall rates of sexual offending in Aboriginal communities are as much as five times higher than Canadian rates, perhaps higher.

On any given day in Canada, there are some 1,500 adult and young Aboriginal sexual offenders under supervision of various provincial, territorial and federal correctional authorities. These offenders represent 20%-25% of all sex offenders in the Canadian correctional system. While there are a disproportionate number of Aboriginal offenders in the corrections system generally, Aboriginal sexual offenders are even more disproportionately represented, in part because they are more often convicted of serious sexual offences involving violence. Aboriginal sex offenders are typically inmates in correctional facilities, while only about one in three are involved in some form of community supervision program. Usually, they are incarcerated on the Prairies or in the North. Most appear to have been severely disadvantaged as children and young adults in terms of family instability, education, employment, social supports, exposure to abuse and violence, abuse of alcohol and drugs, and in many other ways.

Sex offenders in the criminal justice system are the “tip of the iceberg.” Only one in one hundred violent offenders are eventually incarcerated. The ratio for sex offenders is probably much less. Moreover, many Aboriginal sex offenders commit crimes in rural and isolated communities, while others commit crimes in communities where, for a variety of historical and cultural reasons, reporting rates to the police are especially low. Thus, it may be estimated that there are some 150,000 Aboriginal sexual offenders in Canada. The actual number could easily be much higher.

We do not know how many offences these offenders commit. However, there are some 600,000 sexual offences committed in Canada each year (see Appendix B). If Aboriginal offenders are responsible for 20% to 25% of these offences, as the incarceration statistics reported in this chapter suggest, Aboriginal sexual offenders could be responsible for some 120,000 to 150,000 offences each year. Of course, estimating these numbers requires making an assumption that Aboriginal and non-Aboriginal offenders are detected and processed through the criminal justice system in the same proportions. Such an assumption cannot be made and, therefore, numbers derived in this way can only be regarded as “ballpark” figures. What we do know is that about 85% of Aboriginal sex offenders are adults, while 15% are young offenders. As best as can be determined, the vast majority of offenders are men (92%) who victimize family members or acquaintances, although about 8% of Aboriginal adult offenders and 20% of Aboriginal young offenders are women. As in Canada generally, victims are primarily women and children, however, higher proportions of Aboriginal women are victims of violence and sexual abuse when they are children. There also appear to be significant differences in the risk of victimization between communities, and even within different segments of the same community. There are some indications that residents of reserves and Inuit communities are particularly at risk.

Despite the substantial and sustained efforts of a few Aboriginal organizations that have attempted to focus attention on the issue of sexual abuse, surprisingly little is known about victimization and offending patterns in Aboriginal communities, and about how Aboriginal offenders are dealt with by the crimi-

nal justice system, or about Aboriginal community perspectives on the extent of the problems and what should be done about them. Getting a perspective on the enormity and features of Aboriginal sexual offending thus requires a good deal of estimation, extrapolation and outright guesswork. Clearly, the available information does not provide an adequate base upon which to build detailed needs assessments or plans.

Some important research is in the planning stages or is already underway. For example, Statistics Canada will be completing a second Aboriginal Peoples Survey as part of the 2001 census. In addition to gaging Aboriginal perceptions about a variety of conditions in Aboriginal communities, the survey will have specific questions relating to residential school experience. The results are expected in 2003. In addition, the Social Sciences and Humanities Research Council and others have provided support for the completion of an Aboriginal victimization survey. This study, which is being carried out by a group of criminologists at Simon Fraser University, is currently being piloted in British Columbia. Despite these important developments, however, it is evident that a much stronger commitment to adequate research is required on the part of all concerned agencies.

Notes

1. For example, these criteria are generally used by the Correctional Service of Canada to establish the number of sex offenders under federal supervision and to determine eligibility for CSC sex offender treatment programs.
2. For a further discussion, see: Pauktuutit (1991c).
3. What follows is based on the discussion in Statistics Canada (1999c). See also Roberts and Mohr (1994).
4. Further information about these projects is available from the National Clearinghouse on Family Violence a Health Canada).
5. Personal correspondence.
6. The estimate of 778 is derived by applying a 17% correction factor to the number in Table 3.7. See note to Table 3.6 for an explanation.
7. Coles (2001). Personal correspondence from Ron Coles, Manitoba Justice.
8. Nasim (2001). Personal correspondence from Shaukat Nasim, Saskatchewan Justice.

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Chapter 4

Strategies For Addressing Aboriginal Offending

In this chapter, the ineffectiveness of conventional western justice system approaches to enforcement, punishment and rehabilitation is discussed. We also review the very considerable evidence showing that these conventional strategies have proven especially unsuccessful in responding effectively to the needs of Aboriginal offenders, victims and communities. Moreover, many experts believe that conventional criminal justice responses often lead to the very opposite of what is intended.

The news is not all bad; far from it. There are many promising approaches to responding to crime in Aboriginal communities that are proving to be more effective in dealing with issues of crime, victimization and offending. These approaches are rooted in traditional Aboriginal beliefs and practices, they are programs developed by Aboriginal communities, and they operate under Aboriginal control. We believe strategies for addressing Aboriginal sexual offending must embrace and build upon these successful approaches.

We begin this chapter with a discussion of conventional criminal justice approaches. The more promising avenues are then discussed. Specific program and treatment issues related to Aboriginal sexual offending are dealt with in chapter 5.

The Ineffectiveness of Traditional Western Criminal Justice Sanctions

Penal sanctions are presumed to protect the public from criminal activity (Canadian Sentencing Commission 1988). It is assumed that the protection of society will naturally result from respect for the law, and that the ability of the legal system to impose sanctions will help to maintain such respect. “The fundamental purpose of sentencing is to preserve the authority of and to promote respect of the law through the imposition of just sanctions” (Canadian Sentencing Commission 1987; p. 5).

The imposition of just sanctions by the state is thought to result in the protection of the public in chiefly three ways: 1) by incapacitating offenders and separating them from society where they will be unable to commit further offences, 2) by denouncing the acts of offenders through the imposition of punishments, thereby sending a message to them and others that criminal behavior will not be tolerated, and 3) by providing sentenced offenders with an opportunity to “mend their ways” through participation in a variety of programs that will increase their chances for successful reintegration into society.

The reasons for imposing penal sanctions are closely tied to the accepted purposes of sentencing in Canada.

These purposes include:¹

1. Incapacitation. Prisons are total institutions. Being sentenced to a term of incarceration means that the offender is cut off from virtually all normal ties with the outside world. By being confined in a secure facility or sentenced to another type of correctional program, offenders are under a degree of scrutiny and supervision that helps insure criminal behavior does not continue. It is self-evident that “incapacitation is congruent with the most quoted overall sentencing purpose: the defense of the public” (Canadian Sentencing Commission 1988; p.10).
2. Deterrence. The principle of deterrence provides a further justification for the use of penal sanctions. Deterrence may be defined as “the declaration of some harm, loss, or pain that will follow non-compliance; in short, the central concept is that of threat” (Zimring and Hawkins 1973; p. 7). It is based on the belief that “the incidence of crime is reduced because of peoples’ fear or apprehension or the punishment they may receive if they offend,” and the idea that “If punishment is inflicted . . . the incidence of crime will be less than it would be if no penalty were imposed”(Cavadino & Dignan 1992; p. 33).

Specific or individual deterrence involves punishing the individual offender in the hopes it will keep him from committing further illegal acts. The individual suffers the pains and humiliation of punishment and is presumably motivated to avoid such sanctions in the future. The concept of general deterrence concerns society at large. It is hoped that other potential offenders will be deterred from committing illegal acts when they see sanctions being applied to those who have been caught (Canadian Sentencing Commission 1987; Cavadino and Dignan 1992; Osborne 1995).

3. Rehabilitation. Rehabilitation or “reform” came about as a prison ideal when it was thought that punitive measures should be augmented by more constructive attempts to rebuild an offender’s character. Punishment within a rehabilitative framework is thought to reduce crime and protect society “by taking a form which will improve the individual offender’s character or behaviour (so that he or she is) less likely to re-offend in the future” (Cavadino and Dignan 1992; p. 36). Rehabilitation, like other purposes of sentencing, has moved in and out of favor (Canadian Sentencing Commission 1987). When in vogue, prisons and other correctional programs may offer a range of rehabilitative opportunities including, for example, anger management, adult basic education, drug treatment, and behavior modification.

1. Research on Incapacitation, Deterrence and Rehabilitation

These purposes of sentencing represent “ideals”. However, there is considerable empirical evidence to suggest that “getting tough” by way of increasing the length or severity of sentences does not achieve any of the main purposes of sentencing that have been enunciated. In particular, it does not appear that increasing sanctions protects society from crime, either by reducing crime rates or by deterring or rehabilitating individual offenders.

Canadian research on the crime-reductive potential of incapacitating people in prison “has demonstrated the futility rather than the utility of incapacitative sentences” (Canadian Sentencing Commission 1988; p. 10).

There are a number of reasons for this:

- Simply locking people away, or locking them away for longer, may exacerbate criminal tendencies and lead to a heightened commitment to anti-social lifestyles. Moreover, almost all offenders are eventually released into the community, most after serving only short periods in prison. While their opportunities to offend may be limited while in jail, if they demonstrate heightened criminal tendencies upon their release, it doesn't take long to "make up for lost time" (Cavadino and Dignan 1992; Fattah 1984; Gendreau and Ross 1995; Goffman 1961; Sykes 1958; Thomas and Boehlefeld 1991; West 1982; Zimring and Hawkins 1973);
- Doob et al. (1995) note that it would take the incapacitation of very large numbers of people, not only current offenders but also "potential" offenders, for incapacitation to have any appreciable impact on crime rates. Therefore, this strategy is quite impractical; and
- Doob et al. (1995; p. 97) also note: "in jurisdictions where the legislature has imposed incapacitative strategies to respond to tragic criminal behaviour, the effect has been predictable and counterproductive." They refer to other researchers who have also investigated the matter and have concluded that "selective incapacitation will never work."

Whether offenders have been successfully deterred or rehabilitated is determined by their rate of recidivism. Recidivism is defined in various studies as subsequent involvement in re-offending, for example, involvement with the police (with or without a charge being laid), re-arrest, a new conviction, or escalation in the seriousness of subsequent offences. Generally, recidivism means "the offender has come into contact with an agency of the criminal justice system in a manner considered to be negative" (Nuffield 1982; p.11).

Although conceptually clear, the concept of of recidivism is complex to operationalize for research purposes. Factors such as the precise definition of recidivism used, the need to amalgamate various data sources, differing time frames for follow-up periods, different sample characteristics in different studies, all-or-none classifications that fail to measure the true number and seriousness of crimes committed, and a host of other factors, may undermine the validity of a recidivism study or the ability to compare the results from two different studies (Holosko and Carlson 1986). In addition, recidivism is dependent upon many factors other than the subsequent behavior of offenders. This includes, for example, the level of enforcement and detection, and how discretion is used when a subsequent offence is discovered. Thus, if an offender does not come into contact with the justice system, should this be interpreted as success? Perhaps the police have not detected a subsequent offence, or have decided not to charge the recidivist.

Despite these methodological concerns, the high rates of recidivism among previously convicted and previously incarcerated offenders strongly suggest that involvement with the justice system does not have a deterrent effect (Klein and Caggiano 1986). For example, it is quite common for re-incarceration rates for previously imprisoned offenders to run as high as 50% or more within a two or three year follow-up period after release (e.g., Nuffield 1982). Given the low levels of crime detection and the fact that charges are never laid for many crimes that are known to the police, the true rates of recidivism are almost certainly much higher. If arrest, prosecution, conviction and incarceration deterred individual

offenders, why would so many subsequently engage in further criminal conduct? If anything, it appears going through the criminal justice process increases the likelihood of going through it again.

There is evidence to suggest that the deterrent effect of a punishment is related to its timeliness and certainty more than to its quantum (Zimring and Hawkins 1973). In other words, increasing the amount of punishment, but applying it unevenly and inconsistently, will not usually result in any increased deterrent effect. On the other hand, offenders who are immediately and consistently punished for violations, even if the punishment is not severe, may well be deterred. Within the current Canadian justice system, however, achieving timeliness and certainty amounts to an illusive dream. Absent a commitment of very extensive additional resources, the existing justice system simply cannot be made to work in this way.

As it stands, many offences are never reported to the police, much less investigated or prosecuted (Doob et al. 1995). Penalties are inconsistently applied. Long and unpredictable delays between the offending behavior and the application of a sanction are the rule not the exception. For example, it has been estimated that only one or two people may be incarcerated for every 100 crimes committed, and some studies suggest even this estimate is high. Little wonder that “incapacitating a few at high cost seems to have little positive effect on the crime rate”(Thomas and Boehlefeld 1991; p. 22).

To understand general deterrence and its effects, it is necessary to “take into account the tripartite distinction of certainty, severity and celerity (speed) of punishment, and to distinguish between perceived and actual levels of each variable”(Canadian Sentencing Commission 1988; p. 8). In particular, for deterrence to be effective, potential offenders must know about the penalties being applied to actual offenders, and this knowledge must keep them from committing crimes they would otherwise commit.

Many studies have shown that the public has little knowledge of the sanctions being applied to offenders (e.g., Lipton et al. 1975; Osborne 1995). Indeed, short of inhumanely severe penalties (capital punishment for parking violations!), “it seems that what punishments are actually inflicted on offenders makes little difference to general deterrence” (Cavadino and Dignan 1992; p. 35). This is not to say that the existence and operations of the justice system do not deter criminal behavior in a general way. Certainly public knowledge that there is a justice system and that some offenders are apprehended, convicted and punished, no doubt leads many potential offenders to exercise restraint.

Moreover, maintaining the credibility of the justice system is likely important to preserve this continuing benefit (Brodeur 1996). However, varying the penalties and, in particular, increasing the penalties, will not produce more of this general effect.

There is a further reason why criminal sanctions appear to have little or no deterrent effect. For deterrence to be effective, a “rational choice” about involvement in crime must pertain. Potential offenders must weight the benefits of a crime against the penalties for being caught and then make a rational choice about how to proceed. It has already been pointed out that this balancing of “costs” and “benefits” cannot occur if, as is usually the case, the penalties are not known or if their application is subject to many uncertainties. In addition, however, many crimes, particularly serious crimes, happen in a spur of the moment, often when judgement is impaired. This occurs, for example, when an offender expe-

riences a fit of anger, or is under the influence of drugs or alcohol. It is very difficult to make the case that any type of rational calculation is at play in these types of situations.

With regard to young offenders in Canada, an extensive review of the literature has determined that “There is almost no support for the view that the strength of the possible punishment is important in understanding whether or not a young person will commit offences . . . changing levels of punishment will not change levels of youth crime . . . Putting people into the youth justice system will not stop future offending” (Doob et al. 1995; p. 75, 81, 88). This finding has also been confirmed by many other experts (e.g., Bala 2000; Baron and Kennedy 1998).

In summarizing these issues, Griffiths (1995; p. 10) has noted that, for deterrence to be effective, there must be an awareness that sanctions will be applied in response to certain behaviors, there must be a certainty of punishment, and the sanction must be applied quickly. However, “In applying these conditions to Canadian society, it becomes apparent that there are many limitations to the deterrent value of Canadian law.”

A further primary goal of sentencing is to effect the rehabilitation of the offender. Here too, however, “Research has consistently failed to show the superiority of particular ‘rehabilitative’ measures over other penal sanctions” (Ericson 1991; p. 139). That is, those subjected to penal sanctions that are intended to have a rehabilitative effect recidivate at the same high levels as those who do not receive the benefits of such programs.

Most studies come to the same conclusion. Cavadino and Dignan (1992: 36), for example, found that “penal measures intended to reform offenders were no more effective in preventing recidivism than were punitive measures.” Moreover, in a review of over 200 studies of various rehabilitation programs, Lipton et al. (1975) found that, with few and isolated exceptions, they had no appreciable effect on recidivism. These are just a few examples from an extensive literature.

One additional study merits mention. It is a recent review of the literature completed for the Correctional Service of Canada. In this review Gendreau, Goggin, and Cullen (1999) reviewed fifty studies involving over 300,000 offenders to determine the effects of prison on recidivism. Their study examined length of imprisonment, as well as community and institutional placements, to determine the effects on recidivism. They found that prison placement produced slight increases in recidivism, and lower risk offenders were more negatively affected.

They conclude that: 1) prison should not be used with the expectation of reducing criminal behavior, 2) excessive use of imprisonment has enormous cost implications, 3) while further assessment is required, the primary purpose of prison should be to incapacitate offenders and exact retribution.

There are many possible explanations for the disappointing results of rehabilitation programs:

- Davidson (1974) notes that such programs are often viewed with skepticism by inmates. Prisoners often understand the limitations of these types of programs and question the sincerity of those involved in offering them;

- Forced treatment of any kind, in any setting, generally does not produce very satisfactory outcomes for most participants;
- Some have suggested that rehabilitation efforts have never really been tried and that correctional officials have simply mastered the “rhetoric of rehabilitation” to obtain more resources without providing any meaningful programs (Haas and Alpert 1995a); and
- Still others have pointed out that the often complex, longstanding, and inter-related social and economic forces that contribute to offending must be taken into account. It may be unrealistic to expect any short-term program, especially one offered in an artificial environment that is separated from real-life pressures and opportunities, to have any appreciable results. Borduin and Schaeffer (1998; p. 164), for example, point out that “treatments that address only a small subset of the possible determinants of violent behavior or that minimize the ecological validity of interventions (e.g., office-based or institution-based treatment) are almost certain to be ineffective in a substantial number of cases.”

Whatever the reasons, most experts agree that it is futile to impose penal sanctions in the hope that they will achieve any significant rehabilitative effects for most offenders.

None of this is meant to suggest that there are no effective intervention programs. On the contrary, as will be shown later in this chapter, many programs have been shown to be effective. However, these initiatives are very seldom criminal justice system initiatives, and they almost never involve increasing punishment. As Doob et al. (1995; p. 147) have stated: “Clearly there are programs that ‘work’ . . . (but) effective programs seem to reside outside the justice system and appear to deal effectively with problems by addressing them directly.” The point here is that there is virtually no evidence that suggests increasing penal sanctions to achieve the main purposes of sentencing will prove to be an effective strategy in protecting the public in either the short or long term.

2. A Canadian Perspective on the Ineffectiveness of Traditional Penal Sanctions

A uniquely Canadian perspective on these issues has been provided by the Canadian Sentencing Commission. The Commission, which was created in 1994, was a non-partisan, independent commission of inquiry that incorporated the diverse skills and perspectives of five members of the judiciary, three criminal justice professionals, and an academic.

The government of Canada established the Commission:

in recognition that there exist serious problems in the structure of sentencing and that these problems (can) only be resolved by a comprehensive set of recommendations which (reflect) the complexities of the criminal justice system as a whole” (Canadian Sentencing Commission 1987; p. 1).

After an exhaustive review of past Commissions in Canada and abroad, an analysis of public and professional submissions, meetings, surveys, consultations, and research, the Commission expressed concerns about “the overuse of custodial sanctions; the excessive length of sentences of imprisonment; the high costs of incarceration; the stigmatizing effect of a jail term and the need to resort to the least

drastic alternative in sentencing” (Canadian Sentencing Commission 1987; p. 47). The Commission found that the Canadian justice system mostly employs a retributive emphasis in the application of penal sanctions. The Commission was particularly critical of *Criminal Code* provisions setting unrealistically high maximum penalties and mandatory minimum sentences. Such a retributive emphasis, the Commission found, had led to higher than necessary rates of incarceration in Canada. With regard to imprisonment, the Canadian Sentencing Commission (1987; pp 3-4, 9,8) found that:

although we regularly impose this most onerous and expensive sanction, it accomplishes very little apart from separating offenders from society for a period of time . . . The belief in the ability of punishment to deter others is exactly that, a belief, rather than a conclusion founded upon a sound body of empirical data . . . There are no comprehensive data to support the idea that courts can, in general, or with specific identifiable groups, impose sanctions that have a reasonable likelihood of rehabilitating offenders.

In other words, imprisonment is not effective in terms of incapacitation, deterrence or rehabilitation.

The stated policy of the Canadian government has long favored restraint in the imposition of penal sanctions, particularly imprisonment (e.g., Government of Canada 1982). Yet, despite these statements and the findings and recommendations of the Canadian Sentencing Commission and other authorities, the use of penal sanctions continues to be common in Canada. In fact, Canada has a higher incarceration rate than many other developed countries.

According to Solicitor General Canada (1999), for every 100,000 Canadians, 129 are behind bars. Corresponding numbers for other countries include: Australia and France — 100, the United Kingdom — 110, Germany — 95, and Norway — 84. The incarceration rate in the United States is 600 per 100,000 (National Crime Prevention Centre 1998). However, the murder rate in the United States is 6.7 per 100,000, compared to 2 per 100,000 in Canada. In the United States, 1.6 million Americans are behind bars. As then Solicitor General Alan Rock has said (quoted in Bala 2000; p. 22): “If the answer to crime was simply harsher laws, longer penalties and bigger prisons, then the United States would be Nirvana today.”

Custody for young offenders shows a different and even more worrisome pattern. Rates rose sharply after the introduction of the Young Offenders Act in 1984 (Hylton 1994; Bala 2000), even though three-quarters of those placed into custody had not committed violent offences. Moreover, whereas the U.S. has a youth homicide rate six times higher than Canada, youth courts in Canada hand out custodial sentences at twice the rate of American courts (Bala 2000).

Imprisonment is expensive. The Canadian Sentencing Commission reported that the average annual cost of keeping a prisoner in a maximum security penitentiary was \$50,000. The cost per bed of building a new institution was estimated at \$200,000. These figures are now more than a decade old.

The Canadian Centre for Justice Statistics (1999) recently reported that there were - 157,766 offenders under supervision in Canada in 1996-97, with 32,970 in custodial facilities. The average daily cost was \$128.35 (\$140.28 in federal facilities), or \$47, 000 a year. In total, adult correctional services in Canada costs \$2.08 billion a year.

According to Solicitor General Canada (1999), 22% of federal inmates and 84% of provincial inmates are incarcerated for non-violent offences.

3. Traditional Penal Sanctions and Aboriginal People

The foregoing discussion has shown that traditional penal sanctions are largely ineffective in preventing crime or protecting the public from victimization. But what about the effects of these types of sanctions on Aboriginal people and Aboriginal communities? There is convincing evidence that these sanctions are even less effective in incapacitating, deterring or rehabilitating Aboriginal offenders.

Numerous studies over the years have compared recidivism rates for Aboriginal and non-Aboriginal offenders who have been incarcerated in Canadian correctional institutions or who have received other types of penal sanctions.² For example, Bonta et al. (1997) found that within three years of completing a community supervision program in Manitoba, 55.6% of the study sample were re-convicted. However, 65.9% of the Aboriginal offenders re-offended, while the corresponding figure for non-Aboriginal offenders was 47.8%. Consistent with these findings, LaPrairie (1996; n.p.) has observed that:

Findings from federal correctional populations suggest aboriginal offenders are at greater risk of re-offending than their non-aboriginal counterparts . . . In Canada, the likelihood of a male aboriginal revoking his parole is almost twice that of a male non-aboriginal (51% vs. 28%), and the likelihood of an aboriginal penitentiary releasee committing an indictable offence is 12 -19 percentage points higher . . . There is a growing body of data which shows aboriginal recidivism levels to be higher than those for non-aboriginal offenders.

There are many possible explanations for the observed differences in recidivism rates. Some of these explanations parallel the weaknesses of recidivism studies that were discussed earlier. For example:

- Aboriginal and non-Aboriginal offenders may have different criminal career characteristics (prior offence record, types of offences, length of involvement with the criminal justice system, etc.). Unless these characteristics are matched, comparing Aboriginal and non-Aboriginal recidivism rates may be like comparing apples and oranges;
- Non-Aboriginal offenders may be released into environments where re-offending is less likely to occur;
- Detection and enforcement practices may help to create a differential between Aboriginal and non-Aboriginal recidivism rates;
- Aboriginal and non-Aboriginal offenders may possess different psychological and behavioral traits (e.g., use of alcohol or drugs) that make them more or less prone to recidivate;
- Non-Aboriginal offenders may have access to more social and economic opportunities that make it easier for them to resist re-offending. Aboriginal offenders, on the other hand, may be drawn from more marginalized segments of society where there are fewer opportunities; and

- Perhaps a number of individual, environmental and cultural factors come into play in any given situation.

Whatever the reasons, it is clear that penal sanctions, although generally ineffective, have even less of an impact on Aboriginal offenders.

Although the reasons mentioned above are important, there is another even more important factor related to culture that must be taken into account in explaining recidivism rates. Because of cultural differences, penal sanctions may be even less effective with Aboriginal offenders than they are with non-Aboriginal offenders. In other words, penal sanctions may simply not result in the same levels of incapacitation, deterrence or rehabilitation for Aboriginal and non-Aboriginal offenders. There is considerable evidence in support of this proposition.

While the differentials reported above could be due to statistical or methodological anomalies, it is noteworthy that numerous studies of comparative “success rates” for a wide variety of health, social services, justice, economic development, employment and other programs have consistently shown similar differentials for Aboriginal and non-Aboriginal participants. This certainly suggests that the observed differences are not artifactual. When programs are designed and delivered by non-Aboriginal people for Aboriginal clients, studies consistently show that Aboriginal clients do less well than non-Aboriginal clients on the outcome measures.³ The reasons for the ineffectiveness of these non-Aboriginal programs have been found to include the following:

- Because the programs have not been designed with the needs of Aboriginal people in mind, they frequently provide services that are not relevant or, alternatively, fail to provide services that are needed;
- Policies, procedures and expectations associated with non-Aboriginal programs often fail to take into account the unique language, culture, traditions, and current life situation of Aboriginal clients;
- Because non-Aboriginal programs typically employ non-Aboriginal staff, there is often a knowledge gap, and a corresponding lack of trust, between the non-Aboriginal service providers and the Aboriginal clients;
- Because Aboriginal communities have had limited or no involvement in designing and delivering the programs, there is typically limited community ownership or support. In some cases, for example, when the circuit court or the child protection worker comes to town, the community may feel that it has been invaded by a foreign power; and
- Because non-Aboriginal programs are seldom “resident” in Aboriginal communities, Aboriginal people usually have limited access to them. In addition, there is typically a high turnover rate among the non-Aboriginal, non-resident staff. Therefore, services are not consistently or sensitively provided and there is usually an absence of meaningful follow-up.

There is every indication that these same reasons apply to correctional programs just as well as they apply to programs in many other fields. These reasons help to explain why conventional justice system sanctions don't seem to work very well for most Aboriginal offenders, most of the time, and why they seem to be even less successful with Aboriginal offenders than with offenders as a whole.

The Iatrogenic Effects of Traditional Penal Sanctions

Some of the many reasons why experts feel penal sanctions are not very effective for most offenders, particularly Aboriginal offenders, have already been discussed. More worrisome yet, however, is the widely held view among many experts and researchers in the field that the effects of penal sanctions may sometimes result in the very opposite of what is intended. Specifically, many experts believe that rather than deterring or rehabilitating offenders, involvement in the criminal justice system actually propels offenders along a criminal "career path".

Usually used in a medical context, iatrogenic disorders are those caused by the physician's diagnosis, manner, or treatment. They are unanticipated and unintended disorders, but they are very real nonetheless. They result from the very action of trying to do something about the presenting problem. In order to understand iatrogenicity in the justice context, some further discussion about the consequences of traditional penal sanctions is required.

1. The Prison as a Total Institution

Once incarcerated, inmates face the realities of a "total institution" as well as the consequences that flow from living in such an environment. Goffman's (1961) classic study of the asylum was one of the first to analyze and discuss the realities of "total institutions" in significant detail. For Goffman (1961; p. xiii), a total institution is:

A place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life. Prisons serve as a clear example.

Prisons are places of secrecy and isolation. Physical barriers and electronic security isolate offenders from the broader society, but also prohibit society's involvement in normalizing prison life (Sykes 1958). Indeed, isolation is a key component of prison life.

Circumscribed and limited living arrangements, physical isolation from the outside world, and the loss of personal privacy and autonomy combine to cause conditions of great psychological and emotional stress for many inmates. In addition, prison overcrowding, common in many Canadian prisons, often makes these conditions worse by requiring increasingly close proximity of inmates while, at the same time, producing more noise, forced contact with others, sleep deprivation, and many other problems. This leads to a decreased tolerance for stress and more open conflicts (Crouch et. al. 1995). Institutions often become "conflict-ridden societies where violence or the threat of it is a daily reality" (Marquart 1995; p. 171).

Over time, as inmates are repeatedly subjected to the ongoing pressures of institutionalization, a sense of common injustice and bitterness develops. This marks an important stage in the inmate's "moral career" (Goffman 1961). As anxiety and frustration continue to rise, and with limited opportunities to vent these negative emotions, inmates often cope by developing very negative attitudes towards persons in authority and society generally. The result is threatened, angered and aggressive human beings (Lockwood 1995).

Prisoners are usually denied the opportunity to exercise responsibility, as most of their daily routines are highly structured by others, and then monitored for compliance (Cavadino and Dignan 1992). Certain actions are expected or coerced, while others are forbidden. There are few decisions to be made.

The loss of autonomy and control over one's own actions, the constant threat of violence, the demeaning treatment, and the removal of the psycho-social supports that provide sustenance in "the outside world," often culminate in debilitation and disempowerment. As a result, prisons release inmates, especially long-term inmates, who are often even less equipped to deal with responsibility and decision making than they were before they were incarcerated (Thomas and Boehlefeld 1991). That many return to offending, as evidenced by the high recidivism rates, should hardly be surprising. Instead of making matters better, the prison experience has actually made matters worse for these offenders and for society.

2. Inmate Sub-Cultures

An extensive literature on the formation of inmate sub-cultures within prisons has developed over the past several decades. These research findings closely parallel the critique of "total institutions" described above. These findings provide a further theoretical and empirical foundation for believing that prisons produce iatrogenic effects.

Wolfgang and Ferracuti (1982) define a subculture as a subset of the dominant socio-cultural milieu that is based on some common characteristic, for example, ethnicity, socio-economic status, or perceived group identity. While a sub-culture may incorporate some of the values, norms and behaviors of the dominant culture, it does not share others. Some values or beliefs of the dominant society may even be rejected. Therefore, members of a subculture and members of the dominant culture inevitable experience some form of conflict.

The members of subcultures possess mutual understandings about subcultural norms, and they derive a variety of both intangible benefits (for example, self-worth, esteem, identity, a sense of belonging or shared fate) and tangible benefits (for example, opportunities for mutual support and aid) from their participation in the group (Brake 1985; Schwendinger and Schwendinger 1985; Davidson 1974; Taft 1988). Subcultural groups induct their new members into the norms, beliefs and behaviors that are distinctive of the subculture.

Within subcultures, when the "association (is) with deviant actors, especially in conjunction with intimate, positive reference groups, motives are learned which rationalize anti-social behaviour" (Brake 1985; p. 46).

Within subcultures that value anti-social behavior, criminal conduct can be seen as “a response to pressures to conform to expectations . . . distrust (and) aggressive attitudes are necessary for survival” (West 1982; p. 122, 133).

Subcultures exist in prisons, and they tend to have a number of distinctive beliefs and norms. These core values, “focal concerns” (Murphy 1995) or “moral paradigms” (Brake 1985), generally include concerns about honor (e.g., don’t assist the police or prison officials, never snitch on a fellow inmate, etc.), loyalty to the inmate subculture, and autonomy in the pursuit of hedonistic pleasures (e.g., the devaluing of work, the enjoyment of drugs and alcohol, bravado about sexual escapades, etc.) (Bowker 1977).

Race, ethnicity, and perceived cultural affiliation can also play an important role in the development of prison subcultures. Indeed, in the prison setting, cultural categories and meanings applied to race are often even more important than on the street (Bowker 1977; Thomas 1991).

In a prison setting, perceived racial and ethnic affiliation is an asset that can be used to make life easier “on the inside.” Like other subcultures, race-based subcultures can produce concrete benefits by providing resources to members, by serving as a buffer between the prison administration and other inmate racial groups, and by offering protection from harassment and discretionary treatment by officials and other inmates (Davidson 1974; Thomas 1991). In fact, it appears that such racially-based prison subcultures are becoming an even more common way for inmates to cope with the conflicts that may arise in prison (Thomas 1991; Bowker 1977; Flowers 1988).

One of the most significant and powerful subcultural values in prison is “toughness” or “machismo.” This involves an emphasis on manliness and virility, and a willingness to enforce words with violence (Davidson 1974; Murphy 1995; Stebbins 1996). For many inmates, machismo, loyalty and toughness are essential for survival in prison (Davidson 1974).

Bowker (1977; 55) has provided a summary of the effects that inmate subcultures have on prisoners:

1. As prisoners increase their acceptance of the prisoner subculture and adopt antisocial prisoner roles, the negative, criminalizing effects of imprisonment also increase;
2. Prisoners’ expectations of their post-prison experience become more negative, as the negative criminalizing effects of imprisonment increase. This causal influence is both direct and indirect via its effect on acceptance of the norms of prisoner subcultures and the adoption of antisocial roles;
3. Prisoners from the lower class and those with the lowest level of contact with the outside world while incarcerated are the most likely to be high in their acceptance of the prisoner subculture. However, the relationship between social class and acceptance of the prisoner subculture is reduced to nearly zero when alienation is introduced as a control variable;
4. Prisoner alienation (powerlessness) leads to increased prisoner acceptance of the subculture;

5. Age of first conviction is related to acceptance of the prisoner subculture, and this finding is not modified by the introduction of alienation as a control variable; and
6. Alienation cannot be explained to any great degree and this could mean that alienation is being caused by structural characteristics of the prison itself.

In other words, the earlier a person is sent to prison, the longer they stay, and the more marginalized and disempowered they are to begin with, the more likely it is that the prison experience will produce a stronger commitment to anti-social attitudes and behaviors. The very attitudes, values and behaviors that prisons require of inmates to survive in the institution, increase the likelihood of their re-offending upon release (Thomas 1991). The prison “exposes inmates to ways of thinking, acting, and responding which, if adopted, seem very likely to have significant and negative effects on the postrelease behaviour of inmates” (Thomas and Petersen 1977; p. 65). If offenders are not committed to anti-social values and behaviors upon sentencing, they are more likely to become so as a result of the prison experience.

That these dynamics are at play in Canadian prisons has been well documented (e.g., Hackler 1994). In fact, in this country, as elsewhere, a major preoccupation of prison administrators is the management, movement and monitoring of inmates, in part, to prevent these inmate subcultures from taking hold, and to minimize their negative effects on inmates.

Thus, when the Canadian Sentencing Commission referred to prisons as “training grounds for criminals” (Canadian Sentencing Commission 1987; p. 40), it was summarizing a complex social phenomena, and one for which there is a good deal of empirical support.

3. The Labeling of Offenders

There is yet another way in which involvement with the justice system can produce iatrogenic effects. In this case, all of those who come into contact with the justice system may be impacted, not just those who are imprisoned. This effect concerns the manner in which the criminal justice system attaches “labels” to offenders. These labels produce changes in self-identity, and in the attitudes and behaviors of others. These effects can combine in ways that strengthen offenders’ commitment to an anti-social lifestyle. Although these dynamics are complex, that they occur with important consequences has been well supported by a wealth of social science research.

A criminal justice system label refers to terms like “criminal”, “delinquent”, “deviant”, “young offender”, “gang member”, “suspect”, “bad actor”, “trouble maker”, “threat”, “inmate”, “prisoner”, “recidivist” and the like. Of course the justice system is not the only institution in society that affixes labels. In fact, the school has also been identified as one of the leading institutions that has the potential to affix negative labels. Moreover, the effects of negative school and criminal justice system labels may interact in important ways. For example, Seydlitz and Jenkins (1998; p. 73-74) point out that through tracking, discipline practices, and policies related to dropouts and “pushouts”, the school can have a dramatic impact on delinquent behavior:

Standard practices in the schools, unless consciously examined, can contribute to delinquency . . . schools create a group of second-class students who earn poor grades, dislike school, find school

boring and irrelevant, have low self-esteem, perceive themselves to be adversely labeled, and become delinquent . . . schools generate delinquency by offering limited opportunities for success and judging students adversely on characteristics unrelated to their actions. In addition, violence and crime in the school increase delinquency among the most serious, chronic, and violent offenders. Studies suggest that the relationship between school conditions and delinquency is due to adolescents' attempts to resolve immediate failure and school problems through delinquency. (Particular problems include:) Tracking. Students who are placed in the non-college-bound track are more rebellious and more delinquent; more likely to perceive school as irrelevant; less attached and committed to school; more likely to drop out of school; and less involved in extracurricular activities. They also have lower self-esteem and receive lower grades. The perception that school is irrelevant, as well as lowered attachment and commitment and lower grades, have been shown to increase delinquency . . . tracking (is) more strongly related to delinquency than . . . socioeconomic status and gender. Discipline . . . the schools' responses to misbehavior heighten delinquency. This increase in delinquency occurs for a number of reasons: school personnel assume that students intend to misbehave because either they are bad or they are from a dysfunctional family, school personnel label students, school rules are often vague, and discipline procedures result in labeling and bad feelings about the school . . . poor use of disciplinary procedures undermines students' motivation . . . males who perceive the school as coercive are more likely to be delinquent. Dropouts and pushouts. The relationship between dropping out and delinquency is unknown. Some researchers have speculated that adolescents will be less delinquent after leaving school because they are escaping a negative environment. Others believe that adolescents who drop out of school will be more delinquent because they are cutting their ties to a major socialization institution that attempts to enhance conformity . . . research supports both ideas. Escaping from school through either graduation or dropping out decreases delinquency . . . juveniles are less delinquent after they leave school, including dropouts who were first arrested while in school, although high school dropouts are more delinquent than are graduates, and delinquency increases the likelihood of dropping out. Furthermore . . . dropping out of school is a group adaptation to school problems; entire groups of adolescents drop out of school together (references omitted).

While other institutions, such as the school system, have also been analyzed from the standpoint of their ability to affix negative, stigmatizing labels, the criminal justice system has nonetheless been singled out as especially important in this regard. Moreover, in the justice system, this process seems to be an inevitable consequence of becoming involved in the system, although the specific label, and its deleterious effects, vary widely depending on the circumstances.

Labeling theory proposes that the affixing of labels sets two important sets of social-psychological processes in motion. Firstly, labeled individuals internalize their label because we all come to see ourselves as others see us. This has often been referred to as the "looking-glass self." As a result, labeled individuals come to think of themselves as fitting the label that has been applied to them. As the label is more consistently and aggressively applied, attitudes and actions increasingly come to correspond with the emerging new identity.

Secondly, labels have stigmatizing effects; others come to think and behave differently towards the labeled person because of the label. Beliefs and attitudes about the person change because of stereotypes about people with the same label. A "criminal", in other words, gets treated like a criminal. Moreover, these processes are not mutually exclusive; they are mutually reinforcing. The social envi-

ronment reinforces the identity, the identity increasingly corresponds with the socially imposed stereotype, actions corresponding to the identity produce further stereotyping, and so on. The effect is to produce a “self-fulfilling prophecy” where labeled individuals increasingly come to act out their assigned identities.

The fundamental social-psychological processes that have been described are the basis of socialization and identity development. They are neither inherently good nor inherently bad; rather, they are features of all human social formations. Positive labels (“high achiever”, “responsible”, “intelligent”) can encourage the development of identities that, when acted out, produce socially desirable outcomes. On the other hand, negative labels can result in the development of identities that produce behaviors that are not desirable.

Winterdyck (2000; p. 241) has summarized the labeling process as follows:

1. A person commits a deviant/criminal act. (If undetected, the act remains primary deviance);
2. Society reacts in a retributive or punitive way;
3. The individual responds by committing more infractions (secondary deviation) which in turn draws additional attention to the criminal. The deviant cycle begins to escalate (e.g., frequency and/or intensity), a self-fulfilling process;
4. The labeled individual develops more hostility and resentment towards criminal justice agents;
5. Society and the legal system respond by further labeling and stigmatizing the offender;
6. As the individual’s options become increasingly restricted, the criminal justice system sees the offender as a problem and the offender sees himself or herself as deviant;
7. The probability for future acts of deviance increases deviance amplification. Therefore, once labeled and stigmatized, the offender’s identity and self-concept evolve around deviance.

GENERAL MODEL OF LABELING PROCESS

Primary Deviance — > informal reaction — > continuance of deviance — > escalation of response (e.g., stereotyping, rejection, alienation of tagged actor) — > more delinquency (secondary deviance) — > formal intervention — > individual begins to see self as delinquent — > self-fulfilling process.

Labeling theorists point out that almost everyone in society commits deviant or criminal acts at some time. Indeed, self-report surveys in Canada and elsewhere consistently confirm that this is the case (e.g., Griffiths and Verdun-Jones, 1994; Doob et al. 1995; Bala 2000; Bartol and Bartol 1998). As Doob and Chan (Doob and Chan 1995; p. 349) point out : “Most juveniles in our society engage in behaviours that may be considered a violation of the Criminal Code.” For most, however, deviance does not result in the affixing of a negative label, with all the self-identity and stigmatizing consequences that this entails. Because a deviant self-identity never develops, in most instances, deviance

never progresses beyond isolated acts. For those who have negative labels affixed, on the other hand, patterns of subsequent behavior may be much different. Over time, the label may propel these individuals into a “deviant career”. They may increasingly: 1) develop a deviant self-identity, 2) come to be treated as deviant by others, 3) have opportunities for other, more pro-social opportunities, denied to them, and 4) come to find a sense of acceptance and belonging only in the company of others who are like-labeled. The consequences for subsequent anti-social behavior are self-evident.

Those labeled deviant are said to move along a continuum from primary deviance to secondary deviance (Murphy 1995; Stebbins 1996). Those farther along the pathway toward a dedicated criminal identity usually associate with like-labeled peers. Eventually, subcultural groups based on the deviant identity may emerge, or new recruits may become caught up in already existing subcultures (Flowers 1988; Murphy 1995; Stebbins 1996). The group teaches the labeled individual how to cope with stigma and, in common with all subcultural groups, offers status and opportunities which may be denied by the larger society (Flowers 1988; Zimring and Hawkins 1973). Those who have been labeled may find lawful opportunities closed to them. At the same time, opportunities for unlawful behavior, expectations to participate in unlawful behavior, and a self-concept favorable to law breaking, may all be present. Although deviance may result in the affixing of labels, it is also the case that the affixing of labels fosters deviant attitudes and behaviors (West 1982).

As Flowers (1988; p. 70) has noted, the power to affix and operationalize labels is reserved for those who “control the sources of legitimate authority and the instruments of force in a society, such as lawmakers and their associated interests.” Power, therefore, is a major variable in the labeling process (Hackler 1994; Marquart and Roebuck 1995).

To the extent that labelers harbor negative stereotypes about any group, this will influence the labeling process (Davidson 1974; Stebbins 1996). As we have seen, officials in the criminal justice system have enormous discretion to affix labels. How they use this discretion is a reflection of their attitudes, values and beliefs (Flowers 1988; Stebbins 1996). Given the existence of widespread prejudice against Aboriginal people, therefore, it is not surprising that members of visible minority groups often find themselves the recipients of deviant labels (Mitford 1995; West 1982).

The affixing of deviant labels is not a random process. Those in society most likely to come to the attention of the authorities for criminal or deviant behavior, and those most likely to be the objects of discrimination, are those most likely to be labeled. Thus, members of racially and economically marginalized groups are most likely to be the ones living out the self-fulfilling prophecy. Ironically, the groups whom the justice system most tries to “punish” or “fix” through traditional justice system interventions, increasingly end up being inducted into deviant careers, not only despite these efforts, but because of them. As Mitford (1995; p. 28) has noted: “There is indeed a criminal type, but he is not a biological, anatomical, phrenological, or anthropological type; rather he is a social creation etched by the dominant class and ethnic prejudices of a given society.”

Labeling theory has encouraged an examination of alternative societal responses to crime and delinquency that are based on the concepts of “non-intervention”, or “minimal intervention, or, more commonly, “alternatives” – alternatives to incarceration and alternatives to justice system processing.

The rationale is straight forward; the justice system is largely ineffective in protecting society and, because of labeling, may even make matters worse, therefore, alternatives that do not involve criminal justice system processing and labeling should be favored whenever possible.

Towards More Effective Strategies

Although traditional penal sanctions have proven to be largely ineffective, especially with Aboriginal offenders, a number of alternate approaches to dealing with crime and offenders have been proposed. In fact, these approaches are now widely in use in many Aboriginal communities. A number of the leading alternative approaches are discussed in this section.

1. Early Intervention

Studies by Richard Tremblay et al. (1992; 1988) at the University of Montreal, and by many other researchers, have shown that elementary school children who exhibit antisocial and aggressive behavior have a higher risk of becoming delinquent adolescents and that chronic delinquency often precedes criminal behavior. Since socialization and skills training for children occurs largely at home and at school, families and the education system have been identified as two important focal points for early intervention programs. Therefore, early intervention programs typically involve family- and school-based initiatives that identify and reduce early signs of antisocial behavior. It has been pointed out many times that antisocial children tend to grow into antisocial adults and, unless the cycle is broken, antisocial adults tend to produce antisocial children (Farrington 1989).

The most successful and widely known early intervention program was adopted in the Perry Preschool Program in Ypsilanti, Michigan in 1962. This “head start” program, which involved a longitudinal follow-up evaluation, showed that program participants born into poverty (123 African-American children) could benefit substantially from early intervention. Compared to a comparison group, the “head start” children accumulated 50% fewer arrests, 33% more high school completions, significantly higher employment earnings, and many other positive social outcomes.

These results confirm findings about the importance of interventions that occur early in life (as opposed to criminal justice sanctions that tend to be imposed much later in life, after there has already been evidence of significant anti-social behavior). Some studies show, for example, that underlying criminality is evident to teachers as early as the first grade, and may persist well into the third and fourth decade of life. Prosocial tendencies, in other words, may either be inculcated successfully before kindergarten, or they may be resistant to acquisition for decades thereafter.

In Canada, the National Crime Prevention Centre (1998; p. 101), in their publication *Prevention and Children: A Compendium of Approaches From Across Canada*, have also identified a number of the early risk factors linked to later criminal behavior. These include: family violence and neglect, parental rejection and lack of parenting involvement, lack of supervision by parents or other caring adults, few or no friends, few or no relatives or neighbors who can provide emotional and social support, difficulties in school, peer pressure, neighborhoods with poor housing, lack of recreational, health and educational facilities, and poverty. The Council has also identified a number of prenatal risk factors. For example, women who experience physical, sexual or emotional abuse during pregnancy are at risk for

premature labour, fetal fractures, and having babies with low birth weights. In turn, low birth weight and poor nutrition during pregnancy can cause neurological damage that leads to later behavioral disorders, learning disabilities, developmental problems, and emotional instability. Consumption of alcohol can lead to Fetal Alcohol Syndrome or Effect (FAS and FAE). Children with these disorders are characterized by hyperactive and disruptive behavior, learning disabilities, and antisocial behavior. Early interventions with parents and families can obviously have a dramatic impact on many of these early determinants of lifelong health and behavior.

Children who are exposed to early risk factors may nonetheless be afforded opportunities that increase their prospects for successful growth and development. Researchers have carried out extensive investigations to determine the “protective factors” that help children cope in the face of significant adversity or risk. Children who are at risk, but who have been able to form one close bond with a competent, emotionally stable care giver (often a member of the extended family), have much better outcomes. Similarly, those who are able to associate with friends from stable families, enjoy school, have a favorite teacher, and participate in community activities, fair much better. And those who have been given the opportunity to help others, or who have cultivated a strong sense of hope, also have fewer problems of adjustment. Once again, there are obvious implications for early intervention.

With regard to the importance of a strong bond with positive role models, there has been particular interest, especially in the United States, in “mentoring programs.” Jones-Brown and Henriques (1997; p. 218-9) found that volunteer mentor programs work effectively to prevent the onset of various kinds of anti-social behavior and they may also work to arrest such behavior once it has begun. Examples of programs they recommend include Big Brothers and Big Sisters, and JUMP (The Juvenile Mentoring Program), available in the U.S..

Community development measures can foster the formation of programs and supports that promote healthy social development and reduce risk factors for children and adolescents. For example, programs that provide accessible prenatal care, effective parenting courses, and school-based initiatives, such as anti-bullying programs and programs that reduce prejudice and hostility, have been shown to be effective. A particularly interesting example of how this strategy works is found in the State of Pennsylvania.

Working to reduce minority over-representation in its juvenile justice system, the state of Pennsylvania sponsored nine community-based delinquency prevention programs (Welsh et al. 1999). The Youth Enhancement Services (YES) project was based on the philosophy that prevention programs should address critical factors at the individual, group, family, school, and community levels. YES focused on reducing risk factors through a social development strategy. According to this model, known risk factors for delinquency and substance abuse can be reduced by enhancing known protective factors.

By encouraging bonding with people and institutions that promote healthy beliefs and clear standards (families, peer groups, schools, and communities), the model suggests that youths will be encouraged to adopt similar beliefs and standards.

All nine sites of the program shared a common emphasis on promoting bonding to pro-social individuals and institutions by providing opportunities, skills, and recognition (Welsh et al. 1999: 90). Specific strategies included:

- Supervised activities to keep youths out of trouble;
- Life-skills training, including problem-solving skills, conflict resolution skills, and cultural diversity and awareness training;
- Tutoring and homework assistance;
- Structured recreation and field trips to learn and practice life skills;
- Career development or vocational training; and
- Community services.

The nine sites shared resources (computer labs, gyms, swimming pool) and delivered a standardized curriculum emphasizing anti-violence education (reduce fights, increase self-respect and respect for others), drug and alcohol prevention, Kid-Ability (life-skills training, the development of communication, problem-solving, and leadership skills), an increased awareness of individual needs and skills, and responsible relationships (healthy relationships, sexual awareness, pregnancy prevention, AIDS prevention, healthy sexuality, etc.).

In summarizing the results of the programs with respect to reducing recidivism, Welsh et al. (1999; p. 105) note:

Community-based programs do at least as well as more secure detention facilities in reducing recidivism . . . If community-based programs can be shown to reliably produce even the same outcome as more invasive efforts at less cost and in a more humane, less stigmatizing manner, their efforts should be welcomed and rewarded . . . (the programs) represent a positive step in addressing the disproportionate number of minority youth in juvenile detention facilities.

Criminologists and psychologists are continuing to build a knowledge base regarding the early roots of anti-social behavior, and how interventions in childhood and in adolescence can prevent young people from breaking the law. Early intervention represents one avenue of reform that is solidly rooted in research and experience. Moreover, early intervention programs need be no more expensive than more traditional penal sanctions. As Cullen et al.(1998; p. 187) have pointed out: “emerging research shows that early intervention programs prevent crime and are cost effective.”

In a fascinating study recently completed by the Rand Corporation in the United States, Greenwood et. al. (1996) examined the cost-effectiveness of several crime-prevention strategies. The study compared the California “three strikes” policy, which promises extended sentences for repeat offenders, with professional child care, parent training, cash “stay in school” incentives for disadvantaged youth, and increased surveillance of high school youth who had shown signs of delinquent behavior.

Most of the alternative approaches were shown to be more effective than the “three strikes” policy in reducing serious crimes. Graduation incentives alone, it was estimated, would have produced a \$200 million dollar increased benefit in terms of crime reduction, relative to the more punitive sanctions. In commenting on this study, Flannery et al. (1998; p. 197) observe:

These findings have serious implications for policymakers who believe that increased incarceration time for juvenile offenders will systematically and over time reduce the youth crime rate.

2. Crime prevention⁴

Reacting to crime after the fact, the chief orientation of the criminal justice system, has increasingly come to be seen as an insufficient response to achieve the goal of protecting society from victimization. As a result, over the past several decades, there has been a heightened interest in preventing crime. While this involves the types of “early intervention” approaches discussed above, it also involves many other strategies.

In general, crime prevention works to address the root causes of crime. It operates through the following principles:

- Crime prevention approaches and strategies are proactive rather than reactive;
- Instead of being imposed upon individuals by the state, crime prevention is focused on strategies that encourage community involvement and accountability;
- Crime prevention strategies build upon and strengthen the social capital of citizens (their connectedness to one another) through a social-development orientation; and
- Crime prevention proceeds on the basis of multi-sector collaboration (social services, education, justice, etc.). Crime is not seen as a problem for the criminal justice system to solve.

One type of crime prevention is “situational” crime prevention. According to Bennett (1998; p. 380), such strategies are:

- Directed at highly specific forms of crime;
- Involve the management, design and manipulation of the immediate environment in as systematic and permanent a way as possible; and
- Increase the effort and risk of crime and reduce the rewards as perceived by a wide range of offenders.

These strategies involve such measures as “target hardening”, access control, improved surveillance, removing inducements, marking property so that its ownership can be more easily determined, and so on.

However, as Short (1990; p. 231) has pointed out:

Crime prevention programs tend often to focus narrowly on persuading community residents to protect themselves from crime by “target hardening” and other means of reducing opportunities for the commission of crime, while ignoring the causes of crime . . . many of these programs focus primarily on public relations and fear of crime rather than on crime reduction . . . grassroots initiatives that address the causes of crime as well as opportunities for crime demonstrate both greater success and greater cost-effectiveness (references omitted).

For this reason, substantial experience in developing and implementing community approaches to crime prevention has also been accumulated. Key strategies include:

- Community Organization. This involves developing services in such areas as block watch schemes, housing rehabilitation programs, building code enforcement, recreational and job counseling programs for local youth, workshops on drug abuse, and “phone trees”;
- Community Defense. This includes neighborhood watch programs, citizens’ patrols and, in the United States, Guardian Angels; and
- Community Development. This refers to a broad range of initiatives relating to the built environment (design improvement, maintenance and repair, etc.), community empowerment, improved housing, and social and economic regeneration programs.

Crime prevention also involves programs to prevent criminality. These are similar to the early intervention programs described above, and include parental training, family support programs, the prevention of homelessness, anti-bullying projects, preschool head start programs, home-school partnerships, youth centers, outreach programs, and a wide variety of other initiatives. While not all of these programs have proved to be effective in every instance, many have demonstrated that they can have an impact on crime rates. In summarizing the results of a comprehensive review of the crime prevention literature, Bennett (1998; p. 398) has concluded: “The history of crime prevention provides a substantial resource on which to draw in order to devise effective strategies for the future.”

In Canada, as part of a national study of model programs, the National Crime Prevention Centre (NCPC) has identified a number of school-based crime prevention initiatives (NCPC 1998). For students whose social or academic foundations are weak, or who are isolated or pushed away by their peers, the school environment can be a source of frustration and failure. Frustration can lead to anti-social behavior, dropping out of school, involvement in delinquency and gangs, drug abuse, suicide, and unsafe sexual practices. Therefore, these programs attempt to build academic and social skills in students, and reduce aggressive behavior.

Examples of programs identified by the NCPC include:

- Interpersonal Problem Solving. These programs come in many forms, such as, anger management, assertiveness training, conflict resolution, and peer mediation. For example, teaching young people to understand their emotions helps them understand what is behind their own feelings and behav-

iors and the feelings and behaviors of others. Anger management and conflict resolution skills help to curb the escalation in disagreements among youth, and help youth to find positive solutions for resolving conflicts;

- Mental Health Counseling. A variety of interventions are available depending on whether the antisocial behavior begins in the early (12-15 years) or late (15-18 years) teens. A number of initiatives to improve access to appropriate supports have also been developed;
- Alternative Teaching Methods. These may involve adding work components, adjusting student learning plans, and changing the environment through alternative classroom and alternative school sites;
- School Transition Programs. As it has been identified that the transition from school to life after school can be a time of high risk for involvement in anti-social activity, these programs focus on providing support through the transition period;
- Peer Mentoring, Tutoring and Self Help. In these programs, youth gain from their contact with helpers from their own age group. This is a way to gain friendship, emotional support, positive attachments, and a sense of security and belonging. Youth are often able to have a greater impact on the lives of other youth than are adults;
- Media Literacy Programs. Advertising and the media have been shown to have a profound effect on youth behavior (e.g., body image, gender stereotypes, acceptance of violence as a means to solve problems, etc.). Media literacy programs allow youth to be better informed about the media and, as a result, less influenced by media images. This allows youth to be better able to make informed life choices;
- Parenting Programs For Youth. For youth, understanding parenting challenges allows them to have improved relations with their own parents. In addition , these programs focus on pregnancy prevention by helping youth to make informed choices about becoming parents; and
- Substance Abuse Programs. Young people who become involved in the use of drugs and alcohol early in life have a greater chance of coming into contact with the criminal justice system, and of suffering from a variety of physical and mental disorders. Known risk factors for alcohol and drug abuse include low self-esteem, hopelessness, having a sense of no control over one's life, poor mental and emotional adjustment, excessive risk-taking, and impulsiveness. These programs use a variety of approaches to provide information, build self-confidence, and develop social skills.

According to the NCPC, effective crime prevention programs:

- Involve multi-disciplinary partnerships and coordinated efforts that go beyond traditional boundaries;
- Work to encourage and promote ownership of issues in a way that is both innovative and effective;

- Emphasize information sharing and awareness to facilitate problem solving; and
- Result in community-based action and leadership.

Not all programs work for all people in all situations. Very often, rather than a generic program, a customized and targeted response is required to address specific concerns. Nonetheless, through the types of initiatives that have been identified, the National Crime Prevention Centre has shown that crime can be prevented.

3. Restorative Justice

The ineffectiveness and high costs of traditional penal sanctions has been well documented. In fact, this recognition has led governments to officially adopt legislation and policies that encourage the use of alternatives to traditional justice system processing. While a substantial literature on these alternatives has been amassed in recent years, and while there are many different types of alternatives now available, there has been particular interest in new responses to crime and dispute resolution that are based on the philosophy of “restorative justice”.

In Canada, there has been intense interest in adopting restorative justice approaches to justice issues involving Aboriginal people. Traditional Aboriginal justice approaches, unlike those of the dominant society, have tended to accord much less importance to a formalized process of adjudication. In addition, unlike the formal justice system, they have not been pre-occupied with the punishment of offenders (Jackson 1992). Rather, these Aboriginal approaches have emphasized the traditional practice of restoring peace and harmony in the community. There is no schedule of penalties for different offences and, in many instances, no formal adjudication process. What is important in the Aboriginal approach is that the offender, the victim and the community feel that a transgression has been dealt with appropriately, and that any divisiveness in the community has been healed. Thus, restorative justice strategies can provide a culturally appropriate means to address the needs of Aboriginal victims, communities, and offenders (Griffiths and Belleau 1995). These approaches can be developed in a manner that is consistent with emerging institutions of Aboriginal self-government (La Prairie 1994; 1998), while, at the same time, they provide avenues for cooperation between Aboriginal and mainstream justice approaches (Green 1998). An increasing volume of literature dealing with the practical aspects of implementing such programs is also becoming available (e.g., Linden and Clairmont 1998; Mallett et. al. 2000).

Restorative justice focuses on repairing the harm caused by crime, and it does so by providing an expanded role in the criminal justice system for victims, offenders and the community. Rather than concentrating solely on punishment of the offender, restorative justice promotes a holistic approach that “heals” the offender, victim, and community together. Restorative justice encourages offenders to take responsibility for their actions by providing redress for victims, and by promoting reintegration within the community (National Crime Prevention Centre 1998).

Restorative justice programs are being widely adopted in Canada, and a number of Aboriginal communities are leading the way. Yet, there are still many details to be worked out regarding the scope and potential of such programs. For example, what kinds of offences, victims and community circumstances

are most suitable for the restorative justice approach? What kinds are not? Nonetheless, a considerable amount of experience is developing, and it suggests that, in many circumstances, restorative justice alternatives are preferable to traditional criminal justice system processing.

Restorative justice approaches may be implemented at four different stages of criminal justice processing: 1) pre-charge, 2) pre-conviction, 3) pre-sentence, and 4) post-sentence. According to the National Crime Prevention Centre (1998; pp. 28-9), some of the foundations of the restorative justice approach at all stages involve a recognition that:

1. In addition to harming victims, crime also results in harm to families, communities and offenders;
2. A crime can often be seen more effectively as a violation against one or more persons by another, rather than as an offence against the state. Restorative justice involves the people most directly linked to an incident — the offender, victim, and members of the community—in a problem-solving approach to deal with crime and its impact;
3. Communities, as well as criminal justice agencies such as police and courts, can take responsibility for dealing with crime. In restorative justice models, the criminal justice system works with the community to respond to crime. The community can play an important role in helping to heal the victim, and in holding the offender accountable to the victim. The community also has the capacity to motivate members to feel a sense of belonging and responsibility toward one another;
4. The damage done to individuals, families and communities through certain crimes can be repaired. Restorative justice aims to have offenders understand the ways in which their crimes have harmed the victim. The offender must work to make amends to the victim and the community. The point of reparation is to acknowledge and pay a debt;
5. Restorative justice can provide credible alternatives to incarceration, ones that will help prevent recidivism and prepare offenders for living constructively in the community; and
6. Greater community understanding and involvement in the justice process may ultimately result in lower recidivism rates. Restorative justice focuses on repairing harm and motivating offenders to become productive members of society.

Restorative justice programs have not yet been accepted as appropriate for every situation. Depending on the type of offence (e.g., offences involving serious violence) and the offender (e.g., one who does not acknowledge responsibility for an offence or shows no remorse), it may be difficult to reach consensus. Nonetheless, while these and other cautions have been expressed (e.g., Levrant et al. 1999), the approach appears to be broadly applicable to many who come into contact with the justice system. Moreover, as discussed more fully later, many Aboriginal communities believe that restorative justice approaches should be used for almost all offenders.

By involving elements of victim restitution, conflict resolution and community restoration, the restorative justice approach suggests “that the whole penal paradigm is mistaken: and that justice, properly understood, should not be punitive at all but should aim instead at restoring victim interests and social

ties”(von Hirsch 1998; p. 673). Some examples of restorative justice programs include:

1. Victim-Offender Mediation. This approach was pioneered in Canada in Kitchener in 1974. It is now used in a number of countries throughout the world and is one of the most widely used types of restorative justice programs. Victim-offender mediation involves face-to-face meetings between the victim and the offender in the presence of a trained mediator. The goal is to develop an agreement so that restitution, either in real or symbolic terms, can take place;
2. Family Group Conferencing. This model is often used in cases involving young offenders. It involves a face-to-face meeting with the victim, the offender, the supports for both parties (usually family members and community workers), and other members of the community. Trained “conference coordinators” lead a discussion of the crime. In the conference, the offender is faced with the full impact of the behavior on the victim, on people close to the victim, and on the offender’s own family and friends. Behavior is condemned, but an opportunity is extended to repair the harm that has been caused;
3. Sentencing Circles. This approach is used in an increasing number of Aboriginal communities. Circles have historical and cultural roots in many (but not all) Aboriginal societies. Sentencing circles take place after the guilt of the offender has been determined in court. Circles provide a more sensitive and effective method for addressing sentencing by providing communities with the opportunity to have input. The goal of the circle is to come to a consensus or resolution on what the offender should do to repair the harm that has been done. Circles also focus on how the offender can be accepted back into the community. It is important to note that the goal of a sentencing circle is not necessarily to find an alternative to incarceration. It is to determine an appropriate course of action with the benefit of community input. Recommendations from circles go back to the courts, where final decisions about sentences are made.
4. Formal Cautioning. Police cautioning is a diversion approach that involves the parents of the offender. Youth and their parents are brought to the police station and are cautioned about the consequences that will follow if there is any further law violation. These cautions are kept on file, and can be later admitted to court as a record of the offence. Cautions, therefore, are only used when a youth admits guilt and would likely be convicted if the case went to trial. This approach is used extensively in the UK, where it has proven to be an effective and inexpensive strategy for dealing with many offences. Formal cautioning has helped to reduce the use of custody for young offenders.

What does restorative justice restore? As Braithwaite (1998) has pointed out, and as is clear in these examples, restorative justice has the potential to restore property loss, injury, a sense of security, dignity, a sense of empowerment, “deliberative democracy”, and a sense of harmony and social support based on a feeling among offenders, victims and the community that justice has been done.

One of the reasons restorative justice initiatives have proved to be so appealing is because they hold out the potential for developing a culturally plural approach to achieving “justice.” All societies and cultures have restorative justice traditions that can be revived and restored. There is now considerable interest in

transforming formal criminal justice practices by incorporating these culturally specific traditions for members of various cultures who come into conflict with the law (Braithwaite 1998).

The approaches discussed here are not a panacea for dealing with crime in Aboriginal communities, and there are particular difficulties in applying these approaches to cases involving sexual offending. There are many instances where traditional penal sanctions need to be employed, if for no other reason than to incapacitate the offender and protect the community. This will be especially true if the community has not had the opportunity to develop appropriate local responses and programs. Moreover, many organizations, including Aboriginal women's organizations, have expressed concerns about whether these approaches provide appropriate punishment for offenders, appropriate denunciation by the community, and effective protection for victims. These concerns are legitimate and must be dealt with in any effective community response.

Conclusion

The social processes at work in the conventional approach to enforcing laws and punishing offenders help to explain two important realities. Firstly, these sanctions do not produce hoped for results; they do not reduce crime or protect members of the community from being victimized. Secondly, these sanctions often have the opposite of the desired effects; at least in some instances, they serve to heighten criminal and delinquent tendencies and a commitment to anti-social behavior.

Conventional criminal justice system approaches have proven to be particularly ineffective when it comes to dealing with Aboriginal people, whether victims or offenders. This has been well recognized in the research literature, by the courts (e.g., *R. v. Gladue*), and even by law makers. For example, Section 718.2 of the Criminal Code requires judges to consider alternatives to imprisonment "with particular attention to the circumstances of aboriginal offenders."

There are a host of alternative approaches to dealing with crime in Aboriginal communities that show much more promise than the enforcement and punishment approaches of the past. These alternative approaches, involve early intervention, crime prevention, community-based initiatives, and restorative justice programs. All have proven to be more effective and no more costly than the conventional strategies adopted by the justice system. Yet, these types of approaches are often "crowded out" in the rush to implement more enforcement and more punitive sanctions.

More police, more courts and more punitive sanctions are not a solution. Such approaches hold out a false promise that the criminal justice system can solve crime problems in the community. In reality, however, these approaches are ineffective at best. They may even make matters worse in some instances. Moreover, the pre-occupation with these approaches, and the tremendous costs they entail, make it difficult to implement the types of strategies that could make a significant and long-term difference in preventing crime and promoting positive community development in Aboriginal communities.

When communities feel threatened and victimized, and when they lack the information, resources and opportunities necessary to respond effectively, a call for more of the same is only to be expected. Members of the community want to be protected and they are often encouraged to believe that a sense of security can be attained by having more police, by removing offenders from the community, and by having harsher punishment. In reality, however, the best interests of the community will be served if communities are given the opportunities and resources to devise meaningful local solutions to prevent crime, as well as to build increasing commitment to community standards and values.

Notes

1. Many other purposes of sentencing may apply in particular instances. For example, the literature speaks about: 1) retributive sanctions, where the offender is made to atone for the wrongs that have been perpetrated (Cavadino and Dignan 1992; van den Haag 1991), 2) reparative sanctions, where the offender acknowledges wrongdoing and attempts to repair the damage that has been done (Cavadino and Dignan 1992), and 3) denunciation, disqualification, requalification and reintegrative shaming, where the offender is publicly and symbolically shamed, but subsequently accepted back into the community (Primoratz 1989). There is an extensive literature on these and other sentencing goals. However, the focus here is on the main purposes of sentencing that are well entrenched in Canadian law and practice.
2. For numerous references, see Northern Justice Society (1993).
3. This is a brief review of a much more extensive review of the literature reported elsewhere (Hylton 1999b).
4. This section draws substantially on a review article prepared by Bennett (1998).

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Chapter 5

The Treatment of Sex Offenders

In previous chapters, a number of problems associated with relying on the criminal justice system to address crime and offending in Aboriginal communities were discussed. The importance of understanding current problems in Aboriginal communities in the context of the undermining of Aboriginal cultures and nations that has taken place in Canada for well over one hundred years was also emphasized. And it was suggested that the most meaningful and long-lasting solutions to Aboriginal sexual offending, Aboriginal crime generally, and other social issues in Aboriginal communities, mostly lie outside the criminal justice system. Rather, in our view, these solutions have to do with the building and strengthening of Aboriginal families, communities and nations through the recognition and support of the Aboriginal right to self-determination and self-government.

The broader strategies that have been discussed cannot be implemented quickly. Rather, as the Royal Commission On Aboriginal Peoples (1996) has pointed out, the healing and empowerment will take a number of decades, and perhaps even generations, to fully achieve. Thus, while these long-term strategies are being pursued, there is also a need to deal with the immediate threats to the well-being of Aboriginal women and children, threats that also undermine the prospects for positive social development in Aboriginal communities. In particular, all concerned stakeholders must recognize that sexual offending among Aboriginal people is widespread in Canada. Steps must be taken to provide effective rehabilitation and support services to offenders and victims, so that wounds can be healed, and the risk to Aboriginal families and communities can be minimized.

In this chapter, treatment and support services for sex offenders are considered. We review trends in the provision of treatment services for sex offenders, discuss the leading approaches that are currently advocated by experts in the field, review some of the current services that are available in Canada, and discuss what is known about the effectiveness of these interventions.

Although there is little experience with programs specifically for Aboriginal sex offender, this chapter reviews a number of promising approaches. In addition, we discuss the results of several evaluations that have been completed, and outline some of the emerging “best practices” in this highly specialized field.

Trends In Sex Offender Treatment

Over the past two decades, greater public awareness about sexual abuse, as well as legislative changes designed to detect and punish offenders, have resulted in more disclosures, more charges being laid, and more sexual offenders being processed through the criminal justice system. While the concerns of interest groups initially centered on the needs of victims and families, the identification of an increasing number of sexual offenders has led to a heightened interest in the development and delivery of effective sex offender treatment programs.

The current literature on programs for sex offenders makes use of three related terms. At the outset, it is helpful to distinguish among them, since each term usually reflects somewhat different views about what leads to sexual offending and what programs for sex offenders should seek to accomplish:

1. Treatment. If the person who offends is regarded as a person who has psychological or psychiatric problems, a treatment program for “the patient” is often called for, whether in a hospital, correctional institution, or community clinic. Treatment is a therapeutic process that places the emphasis on the psychological needs of the individual offender. While healing is hoped for, the focus is on personal healing. It is reasoned that this must occur before reintegration into society is possible. Through treatment, it is intended that the sexual offender will learn about his distorted thinking and feelings, and what has led to their development. It is hoped that this awareness will help the offender to change or control his thinking patterns and behavior.
2. Rehabilitation. If the person who offends is regarded as a “sexual offender,” a rehabilitation program that will reduce the risk of re-offending is called for, whether within an institutional or a community program setting. In the rehabilitation paradigm, the sexual offender is not viewed as a “bad” person, but as someone whose destructive surroundings and upbringing have led to the development of inappropriate and unacceptable behaviors (Yantzi, 1998). Through the rehabilitation program, the person who sexually offends is encouraged to acknowledge wrongdoing and change behavior (Yantzi, 1998).
3. Healing. This term is increasingly in use, particularly with regard to what might otherwise be termed rehabilitation programs for Aboriginal offenders. Healing refers to an all-encompassing recovery process that involves not only the sexual offender, but often the victim, the family and the community as well. While it involves psychological and emotional components, whole health is also seen as having an important spiritual dimension. In this paradigm, the unhealthy or “out of balance” individual is seen as a complex, multifaceted individual who is an integral member of a family and community network. The focus is on restoring balance. The perspective brought to the healing process is one of hope for positive outcomes (Solicitor General Canada 2000).

Although the terms are often used interchangeably, in point of fact, “treatment” and “rehabilitation” are predominantly used to describe programs based on western healing paradigms, while “healing” is predominantly used to describe programs based on traditional Aboriginal beliefs and practices. We will follow that usage here.

1. Types Of Sex Offender Treatment Programs

The specific design of sex offender treatment programs is based on the underlying theory of causation that has been used in the program design. Because there has been a good deal of uncertainty and disagreement about these causes, different approaches to treatment have flourished (Coleman et. al. 1992). In part, this is due to the fact that sexual offending is a relatively new area of concern for mental health professionals and the criminal justice system. This has meant a good deal of speculation about causes, a good deal of experimentation with different types of treatment, and not a lot of systematic research.

However, this is changing and there are a number of common themes that now run through much of the literature on the treatment of sexual offenders. These will be discussed at the end of this section

The majority of current treatment programs are based on a cognitive-behavioral approach. However, before describing this approach, we discuss some of the other treatment options that have been tried. Some of these other approaches are controversial and may even be seen by some as inhumane or unethical. Nonetheless, they are mentioned here so as to provide a more or less complete overview of the types of programs that have been in vogue or are currently in use.

Some theorists believe that persons who offend sexually have a biological or organic disorder. For example, there has been particular interest in understanding the role of elevated levels of testosterone. In some hospitals and correctional institutions, including those in Canada, sexual offenders are given anti-androgen treatments such as Depo-Provera to reduce their testosterone levels and sexual drive. Concerns related to what some refer to as “chemical castration” treatments include the ethics of administering such drugs, the side effects that may develop as a result of the treatment, and the fact that it is extremely difficult to ensure compliance with the treatment (Hollins & Howell 1991). A further concern is that the empirical evidence does not clearly support the proposition that elevated testosterone levels are the underlying cause of most sexual offenses. Nonetheless, this treatment is often provided, particularly in those cases where the offender has extreme difficulty in suppressing deviant sexual arousal (e.g., sexual attraction to children). In most cases, it is used where the suppression of sexual drives is seen as a prerequisite to effective participation in other types of treatment programs.

Another controversial technique that also involves attempts to reduce the production of testosterone involves surgical castration. This technique was widespread in Europe for many years and, after a moratorium, it has been re-introduced in some countries (e.g., Denmark). Thorne-Finch (1992) explores this issue at some length. The conclusion he reaches is that the effectiveness of the treatment is somewhat dependent on the sexual offender himself. If the sexual offender chooses this treatment, it appears to increase its effectiveness. However, castration does not guarantee the cessation of a man’s sexual activities or desires. The sexual offender may, therefore, be able to continue with the behaviors that the treatment was designed to eliminate. The ethics of this technique are especially controversial in jurisdictions where offenders may be enticed into choosing castration as a stated or unstated condition of winning release from a custodial institution.

There has also been experimentation with psycho-surgery. This technique involves destroying the parts of the brain that are believed to control sexual behavior. This approach was never widely used and is not practiced in Canada today.

Proponents of psychotherapeutic approaches to treatment believe that intrapsychic dynamics are at the root of sexual offending. Treatment programs based on this approach involve exploring intrapsychic and developmental conflicts through individual and group psychological counseling or therapy. Usually, the goal is to identify and resolve the early life conflicts and trauma that are believed to have led to sexual offending (Becker 1994). This form of treatment is lengthy, since it involves attempts to restructure the individual’s personality, and it usually does not involve a specific focus on sexual offending (Hollin & Howells 1991). Unfortunately, there are no common standards for measuring the outcomes of this treatment approach (Becker, 1994). Moreover, because of its impracticality, as well as concerns

about effectiveness, this form of treatment is seldom provided today. It has been suggested that psychotherapeutic approaches are limited because they fail to take into account society's role in the creation of violence against women and children.

Many sexual offenders have been found to be socially anxious or lacking in the skills needed to function satisfactorily with other adults. They may also have attitudes and thought patterns about relationships that increase the likelihood they will offend sexually. Treatment programs have, therefore, often incorporated group and individual skills training components to address these issues. Some therapists also incorporate the use of surrogates and role playing, so that the sexual offender can learn and practice sexually appropriate behavior (Hollin & Howells 1991).

Another type of therapeutic intervention can best be described as a behavioral, classical conditioning or stimulus-response type approach. In these programs, the sexual offender undergoes aversion therapy, covert sensitization, imagery, systematic desensitization, satiation, or a variety of other behavior shaping techniques (Hollin & Howells 1991). These approaches involve the pairing of an image or thought about particular behaviors or sexual partners with unpleasant or pleasant consequences in an attempt to shape appropriate behavior patterns. With covert sensitization, the patient may also create imagined alternatives to the offending behavior and the positive consequences that choice would lead to. The main goal is to reorient sexual preferences so that they are more appropriate. In this approach, it is theorized that appropriate attitudes and values will follow on from appropriate behavior. Some research indicates that these techniques can reduce recidivism, at least with some offenders.

A variation on these approaches involves orgasmic reconditioning (or masturbatory conditioning). In this approach, the sexual offender replaces deviant fantasies with non-deviant fantasies during masturbation (Hollin & Howells 1991). These techniques are self-conducted. Therefore, misinterpretation by the patient and failure to follow through with "assignments" are difficult to monitor. These techniques require highly specialized personnel and, sometimes, specialized facilities. If not done properly, they may be ineffective or worse (Ryan & Lane 1991).

2. Cognitive-Behavioral Therapy

Cognitive-behavioral therapies are the most commonly used and widely evaluated of all of the treatment approaches used with offenders generally, and with sex offenders in particular (Becker 1991). This approach originates in social learning theory (Bandura 1986), and in the work of Dr. David Burns, the author of *Feeling Good: The New Mood Therapy* and *The Feeling Good Handbook*. In this approach, negative-thinking patterns and inappropriate behavior are thought to be linked. Furthermore, these negative thought patterns may become distorted and unrealistic. The distorted and unrealistic thoughts are often the product of one's previous experiences, or those of other close individuals. In other words, these negative thoughts have been learned. However, this theory is based on a belief that thoughts and behaviors can also be "unlearned." Assignments related to unlearning negative thoughts are common in this treatment approach. Confronting negative thinking is the foundation of cognitive-behavioral therapies.

The application of the cognitive-behavioral approach to the treatment of sexual offenders focuses on three goals: changing the person's maladaptive pattern of deviant arousal, correcting the distorted thought patterns that support these maladaptive behaviors, and increasing the person's social competence (Morrison, Eroga & Beckett 1994). In addition, these programs often incorporate an educational component that increases the sexual offender's knowledge about human sexuality, the impact sexual assault has on victims, and the sexual assault cycle.

An important component of cognitive-behavioral approaches involves addressing cognitive distortions. These are false or distorted beliefs that offenders rely on to justify or minimize their behaviors. For example, they may blame the victim, minimize the harm that their offending causes, or rationalize their sexual aggression. During treatment, these beliefs are challenged and altered so that the offender is able to make a more accurate assessment of his behavior and its consequences.

Cognitive-behavioral treatment programs are used for offenders of all ages. However, it has been suggested that younger sexual offenders may be particularly responsive to this approach because they have fewer distorted beliefs and less well established deviant sexual arousal patterns (Morrison, Eroga & Beckett 1994).

Cognitive-behavioral treatment programs typically begin with teaching the sexual offender about the sexual offense cycle. Learning about this cycle, it is believed, allows the offender to develop an understanding of how fantasies about power, control and sexually deviant behavior lead them into offending. This, in turn, is said to allow offenders to see that sexual offending has precursors and antecedents and does not occur randomly or without warning (Ryan & Lane 1991).

It is within the context of learning what triggers the sexual offending behavior that many cognitive-behavioral treatment programs incorporate conditioning assignments such as covert sensitization. The underlying purpose of these assignments is to interrupt the pleasurable associations and anticipation that the deviant sexual fantasy creates in the mind of the sexual offender (Ryan & Lane 1991). Offenders may work on a variety of scenarios, for example, about a deviant situation, an aversive one, and an escape or reward scenario. These assignments are intended to improve impulse control and decision making, as well as decrease deviant arousal patterns and the cognitive distortions that support them (Ryan & Lane 1991).

Most cognitive behavioral treatment programs entail group counseling in addition to individual cognitive counseling and assignments. The group provides a place where the sexual offender is encouraged to openly discuss his offending behaviors. Offenders also have the opportunity to take responsibility for their actions and discuss their present experiences. Such groups may be used, for example, to develop an understanding of consent, equality and coercion, as well as to reinforce information about the sexual offense cycle. The treatment group also provides a combination of confrontation and support that bears some similarities to the pressures that peer groups may exert "on the outside" (Ryan and Lane 1991).

Cognitive-behavioral treatment programs also focus on teaching the sexual offender new ways to think about particular situations and the cognitive and behavioral responses to them. This process often involves exploring the societal messages and myths that support sexually abusive behaviors. Sexual

offenders are taught why the myths are false. New messages about appropriate relationships can then be learned.

Cognitive-behavioral treatment programs may also incorporate educational and skill building sessions that address the sexual offender's deficits in these areas. Sessions usually include information about healthy human sexuality, dating and relationship skills, social skills, the definition and acceptance of one's own sexuality, and the development of values that support consensual sexual interactions (Ryan & Lane 1991).

Because many sexual offenses occur within families, cognitive behavioral treatment programs sometimes incorporate family systems therapy into the treatment. This is considered to be essential in the treatment of incest offenders (Morrison, Eroga & Beckett 1994). It is also used quite extensively in the treatment of juvenile offenders (Ryan & Lane 1991)

3. Relapse Prevention

Relapse prevention programs are an extension of cognitive-behavioral treatment. A focus on relapse prevention has developed from a realization that, like other compulsive behaviors, impulses to offend sexually require lifelong management. Relapse prevention for sex offenders has been adapted from addictions research and practice. It is a post-treatment intervention that is intended to maintain the benefits of treatment and assist the offender to avoid relapsing. The primary goal of relapse prevention is to assist offenders to acquire the skills they need for effective self-management.

Relapse prevention programs focus on encouraging the sexual offender to recognize that offending behavior is a choice over which control can be exercised. Moreover, it is a choice for which each offender must take responsibility. Through cognitive-behavior therapy, the sexual offender learns the patterns of thinking, feeling and behaving that have contributed to their offending in the past. They then make a plan to avoid the triggers that increase their risk of re-offending. In developing the relapse prevention plan, strategies for controlling behavior are learned and rehearsed.

The relapse prevention plan, usually a written plan, typically requires that the sexual offender avoid activities and situations that have previously been identified as risky (Mathews 1995). For example, a pedophile may need to avoid pornography that depicts children in a sexual manner, or situations where he would be alone with a child. In addition to avoiding these activities and situations, the sexual offender also develops a plan of action if and when he finds himself at risk.

Sexual offenders who are enrolled in relapse prevention programs are also encouraged to develop new hobbies and pastimes, and to learn and develop the skills required to have positive, healthy relationships. Attention is paid to attending to the factors that contribute to physical and emotional health (Mathews 1995). Offenders may also be encouraged to deal with family issues and any past experiences as victims of physical or sexual abuse.

Groups to provide continuing support for relapse prevention have also been developed. The purpose of such groups is to create a safe environment where recovering sexual offenders can share their experiences and receive the support they require to maintain their personal relapse plans. Sexual offenders are

encouraged to rely on support groups to assist them in dealing with any real or perceived issues they are experiencing in maintaining their relapse prevention plan (Mathews 1995).

4. Themes and Issues

A number of common themes and issues emerge from the literature on effective sex offender treatment programs. The state of the research in the field does not allow many definitive statements to be made about “best practices.” Therefore, what follows might more appropriately be described as “emerging best practices.”

- The Purpose Of Treatment. The underlying purpose of sexual offender treatment programs almost always refers to the cessation of the sexually inappropriate behaviors. This is the case whether the program is for offenders who have been accused of a crime, those who have been convicted, or those who have been referred or self-referred to a treatment program. In virtually all of these cases, whether the program is in the community or offered within a correctional institution or hospital, or whether the program is offered within the criminal justice system or elsewhere, the main goal of treatment is to prevent future sexual offending behaviors;
- Multi-Factoral Causation. As we have seen, a variety of types of treatment interventions have been implemented over the years. These include general psychotherapeutic, organic, behavioral, cognitive-behavioral, and relapse prevention programs. Earlier approaches were often based on an assumption that a single factor, such as difficulties with emotional expression or intimacy, were behind sexual offending. Increasingly, however, the multidimensional nature of causation has been recognized and treatment programs have incorporated a variety of different approaches to address multiple factors (Yates 1999).
- Treatment Methodology. Although different programs use different techniques, most contemporary sex offender treatment programs employ a cognitive-behavioral approach combined with relapse prevention. These programs focus on helping the sexual offender to decrease his deviant sexual arousal patterns, while increasing his non-deviant arousal responses. Usually, there is also a focus on developing functional social skills, and learning how to manage stress and anger. Many of the cognitive-behavioral treatment programs also incorporate techniques aimed at helping the sexual offender understand and change his cognitions regarding the impact that his actions have on the victim. Information about the sexual offense cycle, and human sexuality generally, is also provided. Some programs also include techniques designed to bring about the restoration of the family; this is particularly true, for example, in cases involving incest (Becker, 1990);
- Sexual Preference. Contemporary thinking about sexual offending places the emphasis on the control of behavior rather than on changing sexual preferences. No treatment method has been shown to be effective in changing sexual preferences;
- Cure vs. Control. It is now widely acknowledged that there is no “cure” for inappropriate sexual cognitions and behavior. Therefore, contemporary treatment strategies focus on the control of behavior. Much as 12 step programs in the area of addictions, experts believe that successful rehabilitation and relapse prevention requires a recognition on the part of sexual offenders and program

providers that recovery is a life-long process. Treatment in this way of thinking is seen as one step along the way, rather than as an end point.

- Eligibility For Treatment. With very few exceptions, participation in sex offender treatment is voluntary, even for offenders who have been convicted of sexual offences and are being incarcerated in correctional institutions. While there may be consequences for not participating that make offenders' decisions something far less than completely free choices, nonetheless, in the vast majority of programs, offenders must agree to cooperate in the treatment process. There is a firm belief among most therapists that compulsory treatment is not, and cannot be, effective. There are two other common pre-conditions that offenders must usually satisfy before being eligible for treatment; they must acknowledge their wrongdoing and be willing to accept responsibility for their actions, and they must see the offending as a problem and be willing to change their behaviors.
- Co-Morbidity. So-called co-morbidity is a clinical term that refers to instances where a patient or offender exhibits two or more disorders that each require treatment. In the case of sex offenders, this is quite common and, as a result, a good deal of the treatment literature discusses how to deal with these types of situations. In many cases, the problem behavior will have taken place while the offender was under the influence of drugs or alcohol. Many sexual offenders have themselves been victims of physical or sexual abuse. Some sex offenders have been diagnosed with a mental disorder or have an intellectual deficit. Therefore, in addition to whatever programming is specifically directed at the inappropriate sexual behavior, there is almost always a need to develop specific plans for addressing these other issues, either as part of the sex offender treatment itself, or through separate treatment modules or programs. Many sex offender programs have specific rules about eligibility for treatment that require the prior completion of treatment for concurrent disorders. There are many differing views about how best to deal with these issues (e.g., McEvoy 1990; Morrison et. al. 1994); and
- Individualization Of Treatment. No treatment approach has been found to be effective for all sexual offenders all of the time. Increasingly, experts believe that the appropriate treatment approach in any particular case involves combining educational, cognitive-behavioral, family system, pharmacological, and other interventions to create a specialized and individualized program that addresses the specific needs of each sexual offender (Morrison, Eroga, & Beckett, 1994).

5. Treatment Effectiveness¹

Because the field of sex offender treatment is relatively new, few evaluative studies have been carried out. Moreover, as Yates (1999, p. 11) and others have pointed out, this limited treatment outcome literature is hampered by a "plethora of methodological limitations which affect the quality, validity and generalisability of findings." This is a new field and there is much still to be learned.

There is considerable concern among experts about general psychotherapeutic approaches to the treatment of sex offenders. These approaches have not been shown to be effective, and more worrisome yet, a number of studies have found that those who have received this type of treatment have sometimes had higher recidivism rates than comparison groups who did not receive any treatment (e.g., Furby et al 1989; Thorne-Finch 1992). This has led to a growing consensus among experts that treatment for

sex offenders must specifically address the offending behavior. Moreover, generic sex offender treatment programs appear to be much less effective than programs that address specific types of sexual behavior. For example, there are different treatment issues for rapists, pedophiles and incest offenders; experts believe programs that address the issues that are specific to each type of offending hold the most promise.

The leading treatment modality, cognitive-behavioral therapy combined with relapse prevention, has been shown to be superior to behavioral interventions alone. A number of studies have shown that this type of intervention is effective in reducing recidivism among exhibitionists, rapists, pedophiles, incest offenders and mixed offenders (e.g., Marshall et.al. 1991; Nicholaichuk et. al. 1998; Marques, Day, Nelson & West 1994; Marques, Day, Nelson & Miner 1989). Recent reviews of the literature have also led to positive conclusions about the effectiveness of this type of treatment (e.g., Hall 1995). In one such review of 79 programs involving some 11,000 treated and untreated sex offenders, for example, Alexander (1999) found that those who received cognitive-behavioral treatment combined with relapse prevention recidivated at a rate that was a third below that of untreated offenders (13% vs. 18%)

At the same time, the results of cognitive-behavioral treatment evaluations are by no means universally positive. Many studies of cognitive-behavioral therapy have shown no treatment effects, and a number of literature reviews bluntly conclude this approach is not effective (e.g., Furby et. al. 1989).

Polizzi et. al. (1999) found 21 evaluations of sex offender treatment in their comprehensive review of the literature. Of these, 8 were too low in scientific merit to be included in an analysis of treatment effectiveness. Of the 13 remaining studies, about half showed a positive treatment effect. Four of these used a cognitive-behavioral approach. There was stronger evidence in support of the effectiveness of non-prison-based programs than prison-based programs. Taken together, the studies did not provide enough information to make any informed judgements about the effectiveness of treatment for specific types of sex offenders.

In recent years, researchers have begun to focus on several methodological problems that may be masking treatment effects. One of these is what researchers refer to as the “low base rate of recidivism”. Contrary to popular belief, sex offenders are less likely to recidivate than many other types of offenders, and the rate of recidivism for some types of sex offenders, for example, incest offenders, is very low indeed. This means that treatment effects are difficult to detect, because the rate of recidivism is already so low.

A second methodological problem concerns the facts that treatment appears to have differential effects depending on the offenders risk of re-offending and the specific type of offence he has committed. Treatment effects, for example, are more evident with high risk offenders than with low risk offenders.² If treatment is provided to all types of offenders, the positive effects for the high risk offenders may be masked when their follow-up data is lumped in with others for whom the treatment has been less beneficial. This is particularly the case because a relatively low proportion of high risk offenders (e.g., repeat offenders) are prone to recidivating at a high rate, while a relatively large proportion (e.g., first time offenders) are prone to recidivating at a low rate. This is leading program designers and researchers to focus on assessing who will most benefit from treatment.

A further complication relates to the definition of recidivism and the determination of what constitutes “success.” Some studies only examine sexual re-offending. Others examine further offences involving violence. Still others look at all types of re-offending. This has a confounding effect, because some types of sex offenders (e.g., rapists) are much more likely to commit a further non-sexual offence, while other types (e.g., pedophiles) are more likely to commit a further sexual offence.

Researchers are increasingly interested in examining the types of interactions that have been described. Alexander’s (1999) literature review, for example, showed that exhibitionists benefitted substantially from treatment relative to other groups, while child molesters fared considerably better when treatment was offered in outpatient rather than prison settings. Other studies (e.g., Worling & Curwen 1999) have shown that juvenile sex offenders are particularly likely to benefit from treatment. These are the types of offender-offence-program-setting interactions that researchers are now investigating.

Thus, while there is no consensus on the issue, many experts believe that cognitive-behavioral therapy combined with relapse prevention can produce at least mild to moderate treatment effects, particularly with offenders who are at high risk of re-offending. For many other offenders, however, the effect may be small or non-existent. Given limited treatment resources, program personnel are increasingly likely to rely on screening and assessment tools to determine which offenders will be offered treatment.

There is a growing body of Canadian research on the effectiveness of sex offender treatment. This literature evaluates specific sex offender treatment programs, and contributes to the development of tools for assessing risk and predicting recidivism. Treatment evaluations have also been completed. To date, results have been mixed (e.g., Nickolaichuck 1999;1996; Barbaree and Seto 1996). For example, one recent review concluded “the results of studies done to evaluate the effectiveness of treatment programs in reducing sexual recidivism have been inconclusive” (Canadian Centre for Justice Statistics 1999; p. 13). Nonetheless, there is growing optimism that further refinement of treatment selection criteria and research methodology will lead to stronger evidence of treatment effectiveness.³

In summing up this research literature, Yates (1999; pp. 37-38) has identified some further “emerging best practices”:

Prior to receiving a disposition, a comprehensive assessment should be conducted to determine an offender’s risk level, which should inform disposition decision-making and management. Applying the principles of effective correctional treatment, higher intensity interventions, including security, treatment, and supervision, should be reserved for higher risk offenders. It is suggested here that a substantial number of sex offenders can be safely managed within community settings, with appropriate treatment and supervision. Treatment should be cognitive-behavioural in orientation, should include relapse prevention, should focus on skills acquisition, and should explicitly target those criminogenic need factors identified during initial assessment. The relapse prevention plan should identify

precursors to sexual offending behaviour, as well as observable cognitive, attitudinal, affective, and behavioural indicators of changes in risk, so that service providers conducting supervision of sex offenders in the community can assess and reassess risk as required. Adjunctive interventions, such as behavioural reconditioning or pharmacological interventions, should be applied as necessary in individual cases, again based upon the pretreatment assessment and later reassessments of risk . . . Treatment of juvenile sex offenders should target clarification of sexual values and the promotion of healthy, age-appropriate sexuality, cognitive restructuring, development of empathy, human sexuality education, vocational, and living skills, and family therapy. Individual, group, and family therapies should each be used, again based upon individual needs and circumstances. Additionally, supervision of adolescent and adult sex offenders should also vary as a function of degree of internal versus external control of behaviour. Sex offenders with a greater degree of internal behavioural control should require less intensive supervision, while those with a lesser degree of internal control will require the external behavioural control that is provided by more intensive supervision. Similarly, offenders who tend to be impulsive may reoffend more quickly and, consequently, require treatment which focuses upon developing control of responding (references omitted).

As with other institution-based programs, a major challenge for sex offender treatment programs involves translating treatment gains into lasting benefits after release. Within the structure of the institution, most offenders do quite well. Once in the community, however, experience indicates that many offenders, particularly Aboriginal offenders, do not show any lasting benefits from the treatment that has been provided.

6. The Current Status Of Sex Offender Treatment In Canada

The completion of an inventory of sex offender programs currently operating in Canada was well beyond the scope of this review. Such an inventory would be of considerable value, since it would establish the number and types of programs, the capacities of these programs, the type of offenders served, and where the programs are currently available. In addition, such a resource would increase opportunities for networking and communication among those involved in this challenging and highly specialized field.

Fortunately, one aspect of this task has been completed. Health Canada (1999a) recently compiled a directory of services for adult survivors of child sexual abuse that listed over 400 programs, as well as a national inventory of treatment programs for child sexual abuse offenders (Health Canada 1999b). This inventory was originally prepared in 1989, and updated in 1993 and 1996. The current edition, prepared in 1999, lists over 200 treatment programs in all parts of Canada.

The Health Canada inventory, although valuable, has several limitations for present purposes. Firstly, as the analysis earlier in this review has shown, many sexual offences do not involve children. Since there are a number of important differences in approaches to the treatment of rapists and pedophiles, and since many programs for pedophiles do not provide treatment services for rapists, further work is required to complete a comprehensive inventory of services for all types of sex offenders. Secondly, we contacted many of the programs listed in the inventory. A number of the programs provided a general assessment or counseling service, or an information and referral service, as opposed to any sort of specialized treatment program for sex offenders. Finally, even though the inventory was prepared in

1999, we found quite a number of the listed programs had changed their focus or were no longer operating. This was particularly true of the programs provided by non-government agencies, however, even within the public sector, there were many changes. The most commonly cited problem was a lack of adequate financial resources. These issues suggest some of the problems that must be overcome in compiling and maintaining an up to date program inventory of this type.

As has been discussed, the development of specialized treatment programs for sex offenders is a relatively recent phenomena. Moreover, until recently, most programs have been provided within the criminal justice system, and primarily within correctional institutions. While some programs operate within provincial and territorial correctional systems, most are provided to federal inmates by the Correctional Service of Canada.

In recent years, increasing attention has been paid to the development and delivery of sex offender treatment programs outside of correctional institutions. Most of these programs are linked to the justice system in one way or another. That is, even if they are not formally provided by criminal justice personnel, protocols between the agency and the criminal justice system have been developed to allow services to be provided to offenders. Some of these programs offer treatment as an alternative to criminal justice system processing, while others provide services to probationers and parolees. These programs may also provide assessment services to the courts prior to conviction, they may assist in providing sentencing recommendations, and they provide court-mandated treatment.

A number of community-based sex offender treatment programs are now available across the country. They are usually offered through the psychiatric or forensic psychiatric programs of large hospitals, or through mental health clinics. Most of these programs provide services to offenders who have been charged and convicted with a sexual offence. The capacity for dealing with other perpetrators, for example those who might be referred by another agency or self-referred, appears to be quite limited.

Most of the available programs are for adults, and most are for men. We were able to identify only a very few programs that had any capacity to provide specialized services to female sex offenders or young sex offenders.

In some instances, programs are specifically intended for sex offenders. In many other instances, however, the program has a broader mandate to deal, for example, with family violence or anger management.

As mentioned, the Correctional Service of Canada is the leading provider of sex offender treatment services in Canada. For at least the past ten years, the CSC has amassed considerable experience in the development, delivery and evaluation of sex offender treatment programs. It is widely regarded in Canada and beyond as one of the leading authorities on sex offender treatment.

The programs provided by the CSC are varied and extensive. Ongoing programs are provided in the Regional Psychiatric Centres operated by CSC, and in a number of other federal penitentiaries. CSC employs many staff at the regional and national level that specialize in sex offender treatment. These staff include program development staff, program delivery staff, and staff who specialize in research and evaluation.

CSC has devoted very considerable resources to the development of sex offender treatment programs and now has one of the most fully developed programs of its kind anywhere in the world (e.g., CSC 2000a; 2000b). Detailed program manuals have been developed that specify numerous program details. These manuals are based on the latest findings about what works in providing effective treatment for sex offenders. The CSC has also developed national standards for their sex offender treatment programs, as well as significant resources for service providers. These resources include guidelines for completing assessments, program standards, program content specifications, and the like.

Programs at three levels of intensity are provided to federal inmates. The high intensity program is intended for high-risk sex offenders. Program delivery consists of a minimum of 15 hours of group therapy and a minimum of 2 hours of individual therapy each week for a period of six to eight months. The moderate intensity program, intended for moderate risk sex offenders, involves a minimum of 10 hours of group therapy and a minimum of one hour of individual therapy each week for a period of four to five months. The low intensity program involves a minimum of five hours of group therapy and a minimum of one hour of individual therapy bi-weekly over a two to four month period. This program has been designed so that it can be delivered in the community directly by CSC or by other agencies (e.g., community clinics, hospitals, etc.).

CSC has also made a significant commitment to the evaluation of sex offender programs using a wide variety of process and outcome measures. In future years, it is expected that a good deal of information will become available about what types of assessment tools and interventions are most effective with specific types of offenders.

Programs For Aboriginal Sex Offenders

As mentioned earlier, there is no inventory of sex offender treatment programs in Canada, nor is there any inventory of Aboriginal sex offender treatment programs. Nonetheless, some programs do exist. In an attempt to compile as comprehensive a listing as possible, we reviewed the sex offender treatment literature, contacted federal, provincial and territorial justice officials, and requested information from Aboriginal organizations, governments and communities. We also contacted experts in the field of sex offender treatment. Through this communication and networking, we attempted to identify every Aboriginal-specific sex offender treatment program in Canada. While we have no way of knowing whether we succeeded in identifying all the programs that are currently operating, we are reasonably certain that most of the programs, and all of the leading programs, have been identified.

One of the challenges we confronted in collecting information from respondents was defining precisely what constituted an Aboriginal-specific sex offender program. We encountered many different definitions.

For example, we heard that Aboriginal-specific programs were regarded to be those where:

- Some, many, most or all of the program participants were Aboriginal;
- Some, most or all of the program content incorporated traditional Aboriginal beliefs and/or practices;

- The program was delivered in whole or in part by Aboriginal therapists; and
- Program development had been completed by Aboriginal experts, including Elders.

For the purposes of this exercise, we did not consider a program that had Aboriginal participants to be an Aboriginal-specific program, unless it also had some of the other elements enumerated above. Had we included these programs, virtually all of the programs in some regions of the country, as well as in some institutions could have been considered Aboriginal-specific. In our view, this would have missed the intention of our review. Instead, we sought out programs that combined the first criteria with one or more of the others.

We believe that the four criteria mentioned above can be combined to create a continuum of program models with various degrees of Aboriginal specificity. Very few programs contain all the elements that have been mentioned, however, most combine two or more elements. As will be discussed later, very little is known about which combination of these program features contributes most to an effective program for Aboriginal sex-offenders.

Before discussing the currently available Aboriginal-specific sex offender programs, we review some of the trends with respect to the provision of Aboriginal-specific correctional programs generally. Following this discussion, we review a number of Aboriginal-specific sex offender programs, discuss what is known about the effectiveness of these programs, and review a number of issues relating to the way these programs are organized and delivered.

1. Programs For Aboriginal Offenders Generally

Provincial, territorial and federal justice programs and, indeed, programs in many other sectors, have been adjusted over the years to take account of the fact that, in some areas of the country, there are many Aboriginal people who require services. Conventional service delivery models have not always proved to be all that effective. Therefore, there have been many reforms within the justice system. These have been extensively documented elsewhere and, therefore, they will not be described here (e.g., Rudin 1999; Royal Commission 1995). Nonetheless, it is worth recalling the discussion in a previous chapter where it was pointed out that there have been several common types of reforms, including:

- Affirmative action hiring policies;
- The creation of specialized Aboriginal units, staffed by at least some Aboriginal employees, within larger non-Aboriginal programs and agencies;
- Cross-cultural awareness and training programs;
- Programs or initiatives that have provided for Aboriginal input into the decision making processes of non-Aboriginal programs and agencies; and
- Initiatives that have provided for the use of traditional Aboriginal practices or ceremonies within non-Aboriginal programs.

These types of initiatives still represent the most common responses to dealing with Aboriginal over-representation and Aboriginal cross-cultural issues in the justice system. In fact, provincial, territorial and federal justice agencies, almost without exception, continue to adopt a wide variety of policies and programs to put these types of approaches into effect.

Recently, Epprecht (2000) conducted a survey of federal, provincial and territorial correctional programs across Canada. She examined any intervention that was systematically applied to offenders with the expectation that it would result in reduced recidivism. In all, 586 program descriptions were submitted from 10 jurisdictions. Thirteen Aboriginal-specific programs were identified. All were institutional programs, most targeted substance abuse, and 11 of the 13 were located on the Prairies. Although this survey is disappointing with respect to the number of Aboriginal-specific programs, the variety of these programs, and their accessibility, there is some indication that the justice system is making an increased commitment to the improvement of services for Aboriginal offenders and communities. Developments within the Correctional Service Of Canada (CSC) serve as a case in point.

According to the Correctional Service of Canada (2001a), a wide variety of Aboriginal-specific programming and support services are now available or are being developed within the federal correctional system. These include, for example, Native liaison services (a type of advocacy and support service for Aboriginal offenders, family members and communities), culturally appropriate addictions and substance abuse treatment, and sex offender treatment. Solicitor General Canada (2001) has outlined a number of other programs and services for Aboriginal offenders. These include traditional cultural and spiritual programs, elder services, mandatory cross-cultural training for staff, and specialized post-release services for Aboriginal offenders. In addition, the National Parole Board now offers elder-assisted parole hearings.

The federal government has also made a commitment to restorative justice programs involving Aboriginal offenders and communities. Two examples include Hollow Water and Maison Waseskun House in Montreal.

A further commitment of the federal government relates to Aboriginal healing lodges. These are residential programs of varying security that provide culturally appropriate services to Aboriginal offenders. A number of these programs are operational, while others are currently being developed. Specifically (Correctional Service of Canada 2001b):

- In 1995, the Ochimaw Ohci Healing Lodge was opened on Nekanet First Nation's land in Maple Creek, Saskatchewan. This 29 bed facility for Aboriginal women was developed partly in response to the need to phase out the federal prison for women in Kingston;
- The Pe Sakastew Centre opened in August 1997. It is a 60 bed facility on Samson Cree Nation's land near Hobbema Alberta, just south of Edmonton;
- In 1994, a 30 bed healing lodge was opened on the Wahpeton First Nation reserve near Prince Albert, Saskatchewan;
- Renovations are underway at the Elbow Lake minimum security facility located on the Chehalis First Nation's reserve in B.C. to convert the facility their to a Healing Village;

- The Stan Daniels Healing Centre has been operated by the Native Counseling Services of Alberta for a number of years. This facility was transferred to Aboriginal control in 1999;
- The Waseskun Centre became a Healing Lodge in 1999. It is located just outside Montreal, and provides programming in both French and English;
- The O-Chi-Chak-O-Sipi First Nation near Dauphin, Manitoba, operates a 24 bed facility; and
- A 40 bed Healing Lodge is operated by the Beardy's Okemasis First Nation, near Duck Lake, Saskatchewan.

In recent years, the Correctional Service has formalized a National Aboriginal Strategy (Wilson 2001).

The four elements of the strategy consist of:

- Strengthening Aboriginal partnerships and relations;
- Strengthening Aboriginal programming;
- Strengthening Aboriginal human resources; and
- Enhancing the role of Aboriginal communities.

In addition to the initiatives already mentioned, CSC is also planning to significantly expand Aboriginal programming, Aboriginal staffing, and research relating to the assessment and treatment of Aboriginal offenders. A further key strategy of the CSC is to expand partnerships with Aboriginal communities using the enabling provisions of Sections 81 and 84 of the Corrections and Conditional Release Act. In addition to the agreements already in place, negotiations are currently under way to establish 25 additional agreements (Wilson 2001).

Although there have been many developments within the federal correctional system, as outlined in a previous chapter, changes in other parts of the justice system are also occurring. For example, the federal government and the RCMP have made an extensive commitment to Aboriginal policing, and the federal Aboriginal Justice Directorate has sponsored numerous initiatives in the areas of diversion, adjudication and sentencing. Parallel developments are also underway within a number of provincial and territorial jurisdictions, particularly in Western and Northern Canada.

This brief overview serves to underscore the fact that many conventional approaches to responding to Aboriginal crime and Aboriginal offending continue to be widely used by justice agencies today, even though these approaches have not proved to be all that effective in the past. While it is important that these initiatives be continued, it is clear that new and different approaches are also required. In this regard, there are promising indications that justice agencies are increasingly prepared to work with and support Aboriginal governments and organizations to bring about the more fundamental changes are needed to address crime in Aboriginal communities. As we shall see in the next section, some of these same patterns are also evident in the provision of programs and services for Aboriginal sex offenders.

2. Sex Offender Programs For Aboriginal Offenders

Our attempts to identify Aboriginal-specific programs for sex offenders in Canada uncovered only a few programs. The programs we identified were generally one of three types:

1. Programs for Aboriginal sex offenders offered in correctional institutions, mostly federal institutions;
2. Programs offered by the justice system for Aboriginal sex offenders in the community, either as an alternative to incarceration or as a post-release program; and
3. Programs provided by Aboriginal organizations to Aboriginal sex offenders in the community, both to those involved in the justice system and others.

In the study referred to earlier, Epprecht (2000) identified 586 distinct correctional programs offered by provincial, territorial, or federal authorities in Canada. Three Aboriginal-specific sex offender programs, all institutional, were also identified in this survey: one provincial program in Newfoundland, and two federal programs, one in Manitoba and one in Saskatchewan.

A current overview of federal correctional programs was provided to the review team by the corporate advisor for sex offender programs at the Correctional Service of Canada.⁴ According to Williams (2001):

- There are no Aboriginal-specific sex offender programs in Atlantic Canada or Quebec. In Quebec, the Correctional Service of Canada did offer a program at La Macaza up until 1997, but this program no longer operates.;
- There is currently one Aboriginal-specific sex offender program in Ontario. There used to be a program at Bath (Kingston), but this is no longer operating. A program for Inuit sex-offenders has just been initiated at Fenbrook Institution in Ontario;
- There are three programs on the Prairies. In Winnipeg, the Native Clan runs institutional programs at the Rockwood and Stony Mountain institutions, as well as a community-based program in Winnipeg. An institutional program for federal inmates, the Clearwater Sex Offender Program, operates at the Regional Psychiatric Centre in Saskatoon, while a community-based program is offered for Aboriginal sex offenders in Edmonton;
- There used to be an Aboriginal sex offender program at Bowden institution, but it no longer operates. Inuit sex-offenders have been transferred to Fenbrook for the new program that has started at that institution.
- In the Pacific region, an Aboriginal sex offender program is offered once a year at Mountain Institution, and a small community follow-up program is offered out of Abbotsford.

We also found an Inuit-specific program operating at the Baffin Correctional Centre in Nunavut. A new survey of federal Aboriginal-specific sex offender programs is currently being conducted. The results of this survey should be available within the coming months. This will provide an up-to-date status report on current program offerings.

In addition to the correctional programs, our review uncovered several community-based programs operated by Aboriginal organizations. These include the Hollow-Water Community Holistic Healing Circle Program in Hollow Water, Manitoba, Waseskun House just outside Montreal, the Canim Lake Family Violence program in Canim Lake, British Columbia, and a community-based healing process on the Mnjikaning First Nation in Ontario. A listing of programs, along with their current status and capacities, is provided in Table 5.1

Detailed program descriptions of all the Aboriginal-specific sex offender programs will be found in Appendix A. We have also included a sample of non-Aboriginal institutional and community-based sex-offender treatment programs that are available, as well as descriptions of several innovative programs that we felt had particular promise.

The institutional programs we identified had mostly been developed by non-Aboriginal experts, usually forensic psychologists and other professional staff working within the justice system. Usually, non-Aboriginal therapists were mainly responsible for program delivery. However, some of the programs contained an Aboriginal-specific element or program component. The Aboriginal-specific component was quite variable, and ranged from having a guest Aboriginal speaker attend at a group meeting, to a significant commitment to incorporate Aboriginal knowledge, beliefs and practices. In some programs, Aboriginal therapists or Elders delivered a part of the program that dealt with cultural issues, Aboriginal spirituality or healing. Some programs also incorporated traditional ceremonies. In many of these programs, most or all of the program participants were Aboriginal.

Our survey identified only a few programs anywhere in Canada. Most of the programs are institutional programs that have small capacities. Some are experimental or in the planning stages, while a number of others have been discontinued. We identified only a few community-based programs. These are mostly small programs that serve local communities. There are vast areas of the country where no specialized programs of any kind appear to be available. In addition, nearly all the programs we identified had no capacity to serve women or young offenders.

Considering the extensive program and support service needs that were documented earlier in this review, we were surprised and disappointed with the results of this survey. We found a few isolated Aboriginal-specific sex offender treatment programs, and no systematic or coordinated effort to address the needs of Aboriginal sexual offenders.

Table 5.1
Overview of Aboriginal-Specific Sex Offender Programs in Canada (2001)

	Program Type	Current Status	Clients*	Yearly Capacity*	
				Total	Aboriginal
<u>British Columbia</u>					
1. Mountain Inst.	Institutional	Operational	m	10	10
2. Abbotsford	Community	Operational	m	?	?
3. Bowden Inst.	Institutional	Discontinued	m	-	-
4. Canim Lake	Community	Operational	m/f/y	2	2
<u>Prairies</u>					
5. Clearwater	Institutional	Operational	m	40	20
6. Native Clan					
a. Rockwood	Institutional	Operational	m	38	14
b. Stony Mountain	Institutional	Operational	m	18	10
c. Community Pro.	Community	Operational	m	59	28
7. Hollow Water	Community	Operational	m/f/y	30	30
<u>Ontario</u>					
8. Bath	Institutional	Discontinued	m	-	-
9. Fenbrook	Institutional	Operational	m	9	9
10. Mnjikaning	Community	Operational	m/f/y	?	?
<u>Quebec</u>					
11. Waseskun House	Community	Operational	m	25	25
12. La Macaza	Institutional	Discontinued	m	-	-
<u>Maritimes</u>					
-	-	-	-	-	-
<u>The North</u>					
13. Baffin Correctional Centre	Institutional	Operational	Adult/m	50	50
Total Yearly Capacity				281	198

* Male = m, Female = f, Youth = y. In some instances, capacities are estimates, since no statistics were maintained.

We did find information about a number of treatment programs for Aboriginal sexual abuse victims, Aboriginal victims of family violence, and Aboriginal perpetrators of family violence. Although most of these programs do not deal with sexual offending in any detail, if at all, many of the concepts and strategies that have been used in the development of these programs would nonetheless be of interest to those involved in the development of treatment programs for Aboriginal sex offenders. For this reason, we reference them here. For example:

- Kahnawake Community Services and others (e.g., Mianiqsijit Project 1994; Mid-Island Tribal Council 1995; Longclaws Rosebush and Backwell 1993; Beardy's and Okemasis Band # 96 and 97 1992) have developed detailed program manuals and descriptions relating to their family violence and family healing programs;
- The Ma Mawi Wi Chi Itata Centre Inc. (1992) and Waseskun House (1991) have developed proposals and extensive resource materials relating to the Aboriginal offender who has been involved in family violence;
- A number of training programs and course curricula for training Aboriginal care givers have been developed. We also found recruitment strategies, instructors manuals, protocols and resource guides (e.g., Vincent 1995; Atenlos Native Family Violence Services 1992; WUNSKA - The Aboriginal Social Workers and Social Services Educators Network 1991; Campbell and Welsh 1994; Helping Spirit Lodge Society 1995; McTimoney 1993; Wood, Bruce and Kiyoshk 1992). For example, the Nicola Valley Institute of Technology (1992) has amassed considerable experience since they began training Aboriginal sexual abuse counselors in 1989;
- Maidman (1992), Maidman and Beedie (1994), and Native Child and Family Services of Toronto (1992) have compiled detailed information on their treatment program for Aboriginal adults and children who have been victims of sexual abuse; and
- The Aboriginal Corrections Policy Unit of Solicitor General Canada has prepared and distributed two technical manuals designed to assist Aboriginal communities to develop strategies to address sexual offending and victimization.

While these resources can assist Aboriginal communities in developing responses to community needs and issues, unfortunately, very little of this information pertains specifically to the issue of sexual offending. Therefore, while the general concepts, principles and strategies are useful, there is little guidance about how to deal with many of the sensitive and controversial issues that must be addressed in developing an effective community response to sexual offending.

Generally, we found that programs and strategies related to family violence are much more fully developed than those dealing with sexual abuse. Moreover, among programs dealing with sexual abuse, we found that programs and strategies for victims were much more fully developed than those for offenders.

3. The Effectiveness Of Sex Offender Programs For Aboriginal Offenders

Over the years, there has been some interest in assessing the effectiveness of treatment and rehabilitation programs for Aboriginal offenders. Generally, recidivism rates have been used as an outcome measure, however, other measures have also been used. These have included, for example, the number of breaches or revocations for parolees or offenders participating in probation and other community corrections program. The results from these studies have been consistent: Aboriginal offenders do not do as well as non-Aboriginal offenders on these outcome measures. In fact, Aboriginal offenders typically do far worse.

A few examples from this research will suffice:

- Bonta et. al. (1997) followed up 903 probationers in Manitoba. The Aboriginal offenders were younger, had less formal education, were more likely to be unemployed, and had longer criminal histories. During a three year follow-up period, 65.9% of the Aboriginal offenders, and 47.8% of the non-Aboriginal offenders recidivated. In other words, the Aboriginal recidivism rate was one-third higher than the non-Aboriginal rate. Higher recidivism rates have also been reported for Aboriginal offenders released from provincial correctional facilities;
- For federal offenders, the likelihood of an Aboriginal penitentiary releasee committing an indictable offence is 12-19% higher than the corresponding rate for non-Aboriginal releasees (La Prairie 1996). In another study of federal inmates, the Aboriginal recidivism rate (66%), was found to be 40% higher than the non-Aboriginal rate (47%) (Hann and Harman 1993);
- In terms of parole, a male Aboriginal offender is almost twice as likely to have his parole revoked (51% vs. 28%) (La Prairie 1996). Other studies have also shown that Aboriginal offenders are less likely to successfully complete their supervision period in the community, more likely to be revoked, and more likely to be returned to prison for a technical violation of release conditions (Aboriginal Issues Branch 2001).

Thus, at least according to these conventional measures of effectiveness, Aboriginal offenders appear to benefit far less from treatment and rehabilitation programs than non-Aboriginal offenders.⁵

Some more encouraging results are available with respect to Aboriginal-specific programs. The Correctional Service of Canada (2001b), for example, reports that healing lodges seem to be more effective in reducing recidivism among Aboriginal offenders relative to conventional correctional programs.

In one study, only 16 of 286 Aboriginal offenders who completed a healing program were returned to federal custody. This recidivism rate of 6% compared favorably with an 11% rate for federal offenders generally. In terms of evaluations of sex-offender treatment programs, very little is known about the benefits for Aboriginal offenders. In our review, we were able to locate only three studies that assessed the effectiveness of sex offender treatment programs for Aboriginal offenders.

The Native Clan in Winnipeg has provided a sex-offender treatment program for Aboriginal and non-Aboriginal sex offenders for over 10 years. This program has made a significant commitment to incorporating Aboriginal knowledge, beliefs and practices, and is certainly one of the leading programs in Canada in this regard (Ellerby 1994; 2000; Ellerby and Stonechild 1998). For example, the program makes extensive use of Elders and traditional ceremonies (see Appendix A).

In 1994, Ellerby (1994) examined the effectiveness of the program for a non-random sample of Aboriginal and non-Aboriginal clients who went through the program between 1987 and 1994. This is the most comprehensive Canadian research aimed at evaluating program effectiveness for Aboriginal sex-offenders.

The results of the Ellerby evaluation are at once instructive and disturbing. While he found that Aboriginal and non-Aboriginal sex offenders who completed the program had about the same recidivism rates, and while these recidivism rates were very low, the Aboriginal offenders were much more likely to drop out of the program. They were also much more likely to re-offend while they were enrolled in the program. Ellerby's results are summarized in Table 5.2.

During a follow-up period ranging from 9 months to four years, none of the Aboriginal or non-Aboriginal participants who completed the Native Clan program was charged with another sexual offense. Only 2% of the non-Aboriginal offenders and 4% of the Aboriginal offenders were charged with a subsequent offence of any kind, and this difference was not statistically significant. This very low rate of recidivism for sexual offenders has also been confirmed in many other studies.

However, program completion rates were dramatically different for the Aboriginal and non-Aboriginal participants. More than twice as many Aboriginal offenders dropped out, 8 times as many were suspended, and six times as many recidivated while in treatment. Among Aboriginal participants, 15% recidivated with a further sexual offence during treatment, while none of the non-Aboriginal offenders recidivated in this way. In all, 58% of the Aboriginal offenders failed to complete the treatment program, compared to 16% for the non-Aboriginal participants. These findings suggest that even a program that makes a specific and significant commitment to providing culturally relevant treatment, there is much to be learned about how to retain Aboriginal offenders in treatment and how to provide programming that is effective.

A further finding from Ellerby's evaluation is also important. In predicting who would recidivate and who would not, Ellerby found that there were some similar risk factors for both Aboriginal and non-Aboriginal sex offenders. These included such variables as associating with criminal peers, having a history of substance abuse, and having a long criminal record. At the same time, not all the variables that were important in predicting recidivism by non-Aboriginal offenders applied to the Aboriginal offenders. In particular, a number of measures relating to family and marital status, mental health and capacity, and academic or vocational achievement were predictive for the non-Aboriginal participants but not for the Aboriginal participants. While the Metis were most like the non-Aboriginal participants in terms of risk factors, only 7 of the 15 significant risk factors for non-Aboriginal offenders proved to be valid for the on-reserve participants in the program, while only 4 of 15 predictors applied to the off-reserve participants. These findings suggest that risk factors may be quite different for Aboriginal and non-Aboriginal offenders.

Table 5.2
Indicators of Effectiveness for Aboriginal and Non-Aboriginal Offenders
in the Native Clan Sex Offender Treatment Program (1987 - 1994)

	Aboriginal	Non-Aboriginal
1. Entered Treatment	36%	64%
2. Did Not Complete Treatment	58%	16%
Terminated	4%	3%
Dropped Out	19%	8%
Suspended	16%	2%
Recidivated While in Treatment		
Sexual	15%	0
Non-Sexual	4%	3%
3. Completed Treatment	42%	84%
4. Post-Treatment Recidivism*		
Sexual	0	0
Non-Sexual	4%	2%

Source: Ellerby (1994). * follow up period ranged from 9 months to 4 years

The Native Clan program continues to operate, and a further evaluation is currently being undertaken. The results of this research should provide important new insights into the effectiveness of Aboriginal-specific sex offender programming, as well as the risk factors associated with Aboriginal re-offending.

A second evaluation of sex-offender treatment for Aboriginal offenders has been carried out by Nicholaichuk and Yates (in press). These authors conducted a long-term follow-up study of offenders who had participated in the Clearwater sex offender program at the Regional Psychiatric Centre in Saskatoon. This program operates on a cognitive-behavioral model and also incorporates relapse prevention. In addition, elders have become part of the treatment staff and they conduct spiritual ceremonies and other cultural practices as part of the program (see Appendix A).

In a follow-up study of program participants, Nicholaichuk and Yates (in press) found that 14.5% of the treatment group recidivated with a subsequent sexual offence during the five and a half year follow up period, while 33.2% of the non-treatment group recidivated sexually.

Since 28% of the treatment group were Aboriginal sexual offenders, Nicholaichuk and Yates (in press) were also able to examine whether there were any differences in the effectiveness of the program for Aboriginal and non-Aboriginal participants. The authors report that there were no significant differences in outcome for treated Aboriginal participants and treated non-Aboriginal participants, and that both groups re-offended at lower rates than their non-treatment counterparts.

This evaluation, like much of the research on the effectiveness of sex offender treatment, confronted a number of significant methodological problems. For example, while 28% of the treatment group were Aboriginal, 44% of the comparison subjects were Aboriginal. This has the effect of confounding dependent and independent variables. In addition, it was not possible to perfectly match the treatment and comparison groups for criminal history and offence type. And the follow up period for the comparison sample was 1.4 years longer than for the treatment group (7.3 years vs. 5.9 years). While these differences are not insignificant, and could have influenced the outcome of the evaluation, the study does suggest that cognitive-behavioral treatment may produce positive treatment effects for both Aboriginal and non-Aboriginal participants.

A third study involved an extensive qualitative assessment of the benefits of cognitive-behavioral therapy and traditional Aboriginal ceremonies for Aboriginal sex offenders in the Clearwater sex offender program at the Saskatoon Regional Psychiatric Centre (Mason 2000). The study revealed that both forms of healing were beneficial for Aboriginal offenders and, in some ways, highly complimentary. The Aboriginal offenders who benefitted most from one approach, also seemed to benefit the most from the other. However, there was considerable variability in preferences and responsivity owing to the fact that Aboriginal sex offenders exhibited a wide diversity of treatment needs. This study did not examine outcome measures.

Although few quantitative studies of program effectiveness have been completed, a number of reports provide the impressions of treatment staff, Aboriginal organizations and Aboriginal elders. We also discussed the issue of program effectiveness with many of the individuals and organizations we contacted throughout the course of this review. Once again, we present these findings as “emerging best practices,” as the current state of research does not allow us to make any more definitive statements. Generally, Aboriginal sex offenders are most likely to benefit from treatment programs with the following characteristics:

1. The treatment program focuses specifically on sexual offending;
2. Program participants have all committed similar types of offences, in particular, rapists and pedophiles are not mixed;
3. Program participants voluntarily agree to participate in the program;
4. In addition to participation in treatment groups, there is an individual treatment component;
5. Provision of treatment, as well as treatment intensity, is matched with degree of risk of re-offending, and a continuum of services is available to meet needs;

6. There is ongoing assessment, before, during and after participation in treatment;
7. All or most of the program participants are Aboriginal;
8. Low and medium risk offenders are provided with services in the community wherever possible;
9. The program is based on a cognitive-behavioral model, and it also incorporates content specific to relapse prevention ;
10. Components of treatment also address other key issues, such as substance abuse,
11. Some or all of the service providers are Aboriginal, including Elders;
12. Although there is a focus on sex offending, a holistic approach to healing that also incorporates traditional beliefs, values and ceremonies is included; and
13. There is a link between institutional treatment, community support and follow-up, and there is on-going case management to insure appropriate services are provided when and where needed.

4. Issues To Be Addressed

This review suggests that there are a number of key issues that must be addressed in order to insure that Aboriginal sex offender receive effective treatment. These include:

1. Program Capacity. Given the numbers of Aboriginal sex offenders, it is evident that the currently available treatment programs are totally inadequate to meet the need. Within the federal system, for example, where it is easiest to determine the gap, it can be estimated that about 200 treatment spaces are required for 800 Aboriginal sex offenders who require a year long treatment program and are sentenced for an average period of four years. This would involve more than quadrupling current capacity. Furthermore, the few available programs are mostly institutional programs, even though the vast majority of Aboriginal sex offenders are in the community. Even in the institutions, however, most Aboriginal sex offenders do not receive any treatment. Moreover, the few existing programs are for adult men. We were unable to identify any Aboriginal-specific programs for Aboriginal women or Aboriginal young offenders, even though our research indicates there are significant service needs in these areas. There are vast regions of the country where it appears not a single Aboriginal-specific sex offender program is offered. A further concern is that available programs are mostly restricted to those who are incarcerated. The capacity to deal with sex offenders who have not been charged or convicted or sentenced to jail appears to be very limited;
2. Program Instability. Particularly in the community sector, but also within the justice system, a good deal of program instability is evident. Even over the past few years, a number of programs have been discontinued due to lack of administrative support or a lack of funding (e.g., Bath, La Macaza, Bowden, etc.). Even in instances where funds have been devoted to Aboriginal sex offender treatment, it is not always clear that the programs have been developed. Within the federal correctional system, there are fewer programs now than in the past. When programs tend to come and go, it is

usually a sign that an issue is not being given a high priority and there is a lack of commitment to a strategic development plan.

3. Program Development. Given the magnitude of the issue, remarkably few resources have been dedicated to developing institutional and community programs that specifically address Aboriginal sexual offending. The most common approach to service delivery involves a standardized cognitive-behavioral program delivered in an institutional setting. Although a few programs add an Aboriginal-specific component, this is quite variable from program to program, and is often quite modest. The overall sense is one of lack of creativity, innovation and variety. This reflects the fact that there has been little support for the development of Aboriginal-specific sexual offending programs. Given the evidence concerning high drop out rates from existing treatment programs, and the high recidivism rates that occur during treatment, we believe there is an urgent need to undertake the more systematic development of more meaningful program options for Aboriginal sexual offenders;
4. Aboriginal Control Of Culturally Appropriate Treatment Services. There are very few programs for Aboriginal sexual offenders, and only a handful that operate under Aboriginal control. In fact, the limited strategies that are currently being adopted to improve the cultural relevance of Aboriginal sex offender programs are reminiscent of those that were common in other types of corrections and human services programs in years past. As has been previously discussed, these types of strategies, which appear to be primarily aimed at allowing Aboriginal offenders to “fit in” to programs based on the values, ideologies, beliefs and thought processes of the dominant society, have generally met with limited success. There is precious little experience in developing and delivering culturally specific programs that address the spiritual and cultural needs of Aboriginal sex offenders. And the few programs that have attempted to address these issues lack the resources and support to share their experiences with others.

It is not clear why further progress has not been made in devolving appropriate resources and control to Aboriginal communities. It may be that many communities have not yet fully recognized the gravity of the issues, or they may be reluctant to accept responsibility without the necessary resources. It is also possible that justice system authorities view the area of sexual offending as difficult and controversial; they may want to proceed cautiously. There is also the reality that there are few trained Aboriginal service providers in this highly specialized field. Nonetheless, it is evident that new models for cooperation involving the justice system and Aboriginal governments, communities and organizations are required.

5. Institutional-Community Links. Significant gaps in linking institutional treatment programs with community support and follow-up care are evident. Since sexual offenders are engaged in ongoing self-management of behavior, and since Aboriginal offenders have higher recidivism rates on account of their more disadvantaged circumstances, on going community support and follow-up would appear to be essential components of an overall support strategy. This is likely to be a particular problem, for example, when Aboriginal offenders from rural or remote areas are released in urban communities with few social supports. Yet, we found virtually no evidence of a systematic approach to addressing these types of needs. Moreover, since most Aboriginal sex offenders are in the community, the provision of ongoing supportive care for life-long self-management has major

implications for programs at the community level. However, we found virtually no evidence that such needs were being recognized, much less addressed, except in a few communities;

6. Continuum Of Care. Because there are so few specialized sex offender treatment services available, it is virtually impossible to match Aboriginal offenders with programs and services that are appropriate to their specific needs. Ideally, a continuum of services would be available. Aboriginal offenders would receive appropriate services to begin with, but they would move along the continuum as needs changed. It has been suggested that services should include prevention and promotion programs as well as treatment, rehabilitation and healing programs (Maracle and Craig 1993). Moreover, there are needs for crisis services, supportive resources, and training. There is no evidence that this kind of co-ordinated continuum of care and support is available for Aboriginal sexual offenders anywhere in Canada.
7. Effectiveness Research. Given the magnitude of the issue, it is apparent that remarkably few resources have been devoted to assessing what works best for sex offenders generally, and for Aboriginal sex-offenders in particular. It is fair to say that we know virtually nothing about the effectiveness of treatment approaches for Aboriginal sexual offenders. This is true about treatment for Aboriginal men, and even more the case with regard to Aboriginal women and youth who offend sexually. Among the questions that need to be addressed are the following: 1) are Aboriginal sex offenders who receive specialized sex offender treatment released at the same time as non-Aboriginals, 2) do Aboriginal sex offenders access treatment at the same point in their sentence, 3) when they receive treatment, does Aboriginal-specific treatment programs improve outcomes relative to conventional sex offender treatment, 4) if there are improved outcomes, what specific components of Aboriginal-specific treatment account for the results — the spiritual or traditional teachings, the ceremonies, the holistic approach to healing, the Aboriginal service provider or elder, etc., 5) does treatment benefit for Aboriginal sexual offenders vary with their risk of re-offending, and 6) do institutional, community or other treatment settings work best for some Aboriginal sexual offenders and, if so, for which ones;
8. Other Research. As previously discussed, basic information about available Aboriginal sex-offender treatment programs is not routinely collected or maintained. Moreover, there is no systematic information collected about how many Aboriginal sex offenders receive treatment and how many do not, how many go without treatment because no programs are available, and how many refuse treatment and why. In fact, there is no systematic information collected about the number of Aboriginal sex offenders who are incarcerated or on parole, where they are located, and what their needs are (Trevethan 2001). A system needs to be put into place to routinely collect and maintain this type of information;
9. Risk Assessment. The type and intensity of treatment provided to an Aboriginal sex offender should be matched with the offender's risk of re-offending. Similarly, sentencing and release decisions require an assessment of risk. And decisions about program placement require an accurate assessment of needs. Yet, there are no specialized risk or assessment tools that have been developed for Aboriginal sexual offenders. While some existing instruments do appear to have some applicability,⁷ the few available studies also suggest that many of the factors that predict the behavior of non-Aboriginal offenders do not apply to Aboriginal offenders. The systematic development of cultur-

ally appropriate needs and risk assessment tools for Aboriginal offenders should therefore be regarded as an important priority;

10. Human Resources. There are very few Aboriginal service providers, and it was reported to us that many non-Aboriginal providers lack the specialized knowledge and skills required to provide effective services to Aboriginal sexual offenders. There do not appear to be many opportunities for training, continuing education, professional development or networking. We looked for guides, course curricula, trainers manuals, sample protocols and other resource materials, but with few exceptions, none were found. Caring for carers must also figure prominently in any human resources strategy in the area of sexual offending. The recruitment, training and retention of Aboriginal service providers is certainly a key to the provision of effective services, particularly in an area as specialized and vexing as Aboriginal sexual offending;
11. Knowledge Transfer. Existing Aboriginal sex offender treatment programs work in relative isolation from each other, and there appear to be few opportunities to share knowledge and experiences. This is less true within the federal correctional system, but certainly applies to programs at the regional and community levels. In some quarters, particularly among elders, there is often a reluctance to commit program information to writing. Sometimes this reluctance is quite understandable and appropriate (e.g., sacred teachings provided by elders), but often it reflects the fact that there is insufficient support to undertake this important work. Some widely reputed programs, for example, had no written program information that could be shared with us. We also detected certain protectionism and defensiveness among some program personnel working in this field, perhaps because work with sex offenders remains controversial. From others, however, we received the utmost cooperation and support. Further efforts will be required to break down the barriers to knowledge transfer.

We believe action on all of these fronts will be required to bring about a comprehensive, coordinated and effective system of care and support for Aboriginal sex-offenders in Canada.

Conclusion

The focus of this chapter has been on the formal treatment services that are provided to sexual offenders. We have identified the need to greatly expand the current capacity for providing such services for Aboriginal sexual offenders, both within the justice system and at the community level. We have outlined a number of strategies for moving towards a more effective system of Aboriginal-specific treatment programs. This involves increasing commitments to research and program development, and investing in the development of the Aboriginal human resources that are required to develop and deliver effective programs. As has been pointed out, sexual abuse is a multifaceted problem that cannot be effectively addressed without the coordinated efforts of many organizations, communities and individuals (Williams et. al. 1997).

In an earlier chapter, we provided evidence to show that programs designed and delivered by non-Aboriginal service providers for Aboriginal clients often are limited in their effectiveness. We also pointed out that while much more needs to be known about the effectiveness and potential of Aboriginal justice

programs, all of the available evidence suggests that they are more successful than non-Aboriginal programs in overcoming the main obstacles to program effectiveness. At the same time, we discussed a number of the funding, authority and recognition issues that were impeding the development of these programs. We have found that all of these issues are constraining the development of an effective system of services and supports for Aboriginal sex-offenders.

At the same time, we do not wish to create any misunderstandings; while the provision of specialized and effective treatment services for Aboriginal sexual offenders is important, and while we believe the justice system and Aboriginal communities must increase their commitments to insure these services are provided, we also believe that such measures constitute only a small part of the overall, long-term plan that is required. Because most Aboriginal sexual offenders are in the community, having never been convicted or convicted and released, we believe that sex offender initiatives at the community level are also required. These initiatives should assist communities in assessing their own needs and devising their own solutions.

Moreover, in the long-term, sexual offending, crime and other social problems in Aboriginal communities can only be addressed by dealing with the underlying causes of instability and distress in Aboriginal communities. These causes have to do with the marginalization and disenfranchisement that Aboriginal communities and nations have experienced within the Canadian state. Changes to address these issues must go hand in hand with improvements to the service system for Aboriginal sexual offenders.

Notes

1. We are indebted to Yates (1999) for providing much of the information on which this section is based.
2. Within the federal correctional system, for example, only about 20% of sex offenders are considered high risk (Williams, personal communication).
3. For a small sampling of some of the Canadian literature on these issues, see: Gordon and Porporino (1996), Hanson et. al. (1995), Hanson and Bussiere (1996), Hanson and Harris (1998), Hanson and Thornton (1999), Hanson and Scott (1996), Hanson (1997), Motiuk and Brown (1993; 1994; 1996), Motiuk and Porporino (1993), Barbaree et. al. (1996), National Clearinghouse on Family Violence (1997), Barbaree and Seto (1998), and Brown (2001).
4. Williams (2001). Personal correspondence.
5. As previously discussed, it is not known to what extent the differences in recidivism and revocation rates reflect differences in the intensity of supervision of Aboriginal offenders, or differences in enforcement and prosecution practices. There is certainly reason to believe that overt and systemic biases account for at least some of the observed differences. Additionally, it is possible that Aboriginal offenders would recidivate at even higher levels without the intervention provided by the justice system and that, relatively speaking, they benefit as much or more from these programs as do non-

Aboriginal offenders. It is also possible, indeed likely, that these justice system interventions are simply not as effective for Aboriginal offenders as they are for non-Aboriginal offenders.

6. We are grateful to Sharon Williams from the Correctional Service of Canada for sharing her ideas with us.
7. For example, Nicholaichuk (2001), personal communication, has examined the value of a risk assessment instrument called Static 99 in predicting recidivism among Aboriginal and non-Aboriginal sex offenders. While the instrument did differentiate between recidivists and non-recidivists for both groups, only about 5% of the variation in sexual recidivism was predicted by the test scores for Aboriginal offenders. For non-sexual recidivism, test scores did not predict recidivism by Aboriginal offenders, although these scores were significantly correlated with outcomes for non-Aboriginal offenders.

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Chapter 6

A Strategic Framework for Addressing Aboriginal Sexual Offending in Canada

In previous chapters, we have discussed the incidence of crime and sexual offending in Canada, as well as in Aboriginal communities. We have attempted to locate the high rates of Aboriginal offending in a proper historical context. And we have examined past and current societal responses, including some of the least and most promising avenues for treatment, prevention, and healing. Along the way, we have identified gaps, needs, and unanswered questions. We have also shared our thoughts about how to improve service delivery for offenders, and how to improve supports for Aboriginal communities who are on the “front lines” of dealing with this issue. In this final chapter, we do not propose to repeat what has already been said. Rather, we wish to focus on a vision for the future.

In this chapter, we develop what we refer to as a “strategic framework” for addressing Aboriginal sexual offending in Canada. What we mean by a “strategic framework” is a clear and simple conceptual model that will direct attention to the key areas where action is most required to bring about meaningful changes.

A Strategy for the Future

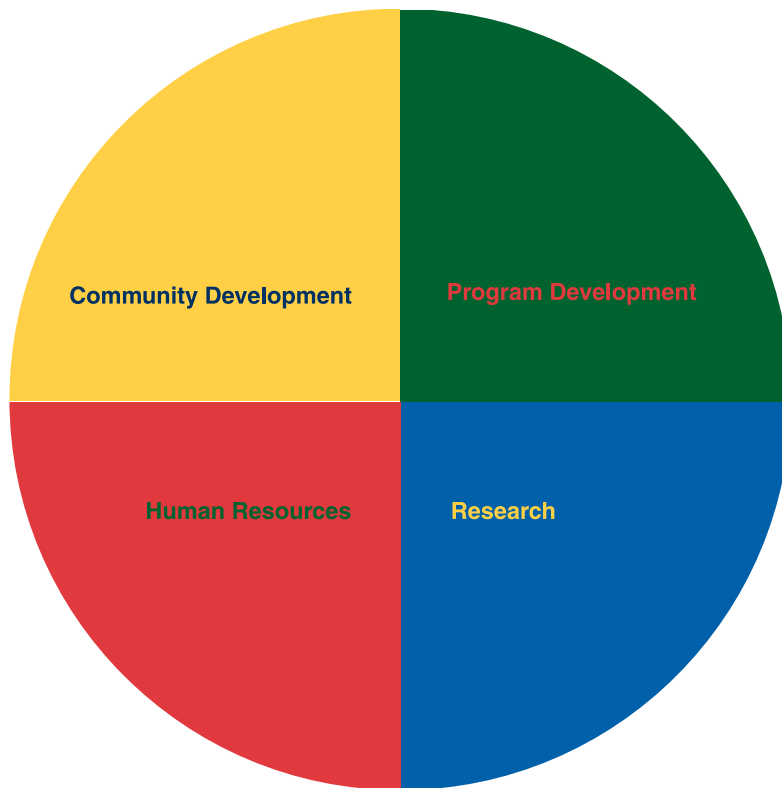
Our examination of the literature in the field, as well as our consultations with Aboriginal organizations and treatment experts, has helped us to develop a number of ideas about future directions. In addition, in considering the strategies that are required to effectively address the issues that have been raised in this review, we also consulted a number of other planning and strategy documents that addressed related concerns, such as child sexual abuse and family violence (e.g., Correctional Service of Canada 1996; Health Canada 1993; 1994a; 1994b; 1997; 1999).

We have concluded that a comprehensive, co-ordinated and effective strategy to address Aboriginal sexual offending will require action on four related fronts (see Chart 1). These include: 1) community development, 2) program development, 3) research, and 4) human resources.

In this section, we outline the initiatives we believe should be a priority in each of these areas. We then discuss some of the immediate next steps that we believe should be taken by the Aboriginal Healing Foundation and other concerned organizations.

Chart 1

A Strategic Framework for Addressing Aboriginal Sexual Offending in Canada



1. Community Development

Long-term, meaningful solutions to the high levels of crime in some Aboriginal communities involve strengthening Aboriginal families, communities and nations. Crime results from complex social, economic and cultural processes. Long-term solutions will come about by addressing living conditions, economic conditions, and social conditions, including education and employment opportunities. The focus of these efforts must be on creating and sustaining safe, secure, and pro-social opportunities for individuals, families and communities. This perspective on crime prevention and crime control accords with the experiences of Aboriginal communities, and with the latest thinking and research from crime prevention experts (National Crime Prevention Centre 2001).

While recognizing the importance of social development, we also believe that the history and present circumstances of each community is unique. Therefore, the social development plan in each community must also be unique. The fact of the matter is that not all Aboriginal communities have crime or sexual offending problems. Many do not. And even where problems do exist, as we have seen, the nature, extent and character of the problems, as well as the range of solutions that are possible, is unique in each case. Therefore, we do not subscribe to a “cookie cutter,” or “one-size-fits-all” approach. Even though we recognize there are many common concerns and aspirations, we believe that each community must assess its own needs, be supported to learn from others and, in the end, find its own way.

With regard to sexual offending, there are other reasons why community-based solutions are appropriate. Removing offenders from the community and incarcerating them for short or long periods is not a very effective strategy for protecting the community. While this may be required in some instances, we have seen that most offences are never reported to the police, only a small proportion of offenders are incarcerated, and prison does not result in effective rehabilitation or deterrence. Moreover, most offenders victimize those they know within their own families and communities. In reality, irrespective of any action taken by the justice system, most Aboriginal offenders remain in or return to their communities.

For these reasons, we are proponents of a community development approach to addressing Aboriginal sexual offending. What is community development? There have been many formulations. Here a few typical ones:

1. Bennett (1992; p. 3) has said that community development involves the “empowerment of individuals and their communities to better meet their economic and social needs.”
2. Fairbairn et. al. (1991; p. 12-13) have described community development as involving “processes of education and empowerment by which local people take control and responsibility for what used to be done to them . . . where other strategies of government and corporate business tend toward centralization, community development depends fundamentally on the greatest possible decentralization of power, knowledge, control, and wealth.”

3. Community development has been described by Roberts (1979) as a process of learning - learning objectives, learning skills, and learning how to act and evaluate actions. It is the process whereby communities become aware of problems, sharpen perspectives through group discussion, clarify objectives, carry out preliminary searches for solutions, screen options, choose actions, and evaluate outcomes.
4. Nozick (1993) has described the community development process as involving three steps - self awareness, community action, and linking with others outside the community.

Community development requires a substantial measure of community control. Nozick (1993; p. 99) has described what this means:

community control means that the decision-making process and organizational structures within a community are especially designed to give all members of the community the power and means to manage their own affairs. Since society is primarily organized on a top-down basis, community control will necessarily require a transformation from hierarchical to nonhierarchical structures so as to allow the maximum participation by community members in the decision making and development process.

Many books and articles have been written about the principles of community development. This is not the place for a treatise on the subject. Yet, it is important to recognize that leadership in refining community development techniques and strategies has been coming from many Aboriginal communities, including communities in Northern and remote areas (e.g., Northern Health Services Branch 1992, Participatory Community Development Committee 1992, Bopp and Bopp 1997a; 1997b; Hollow Water 1989; Hollow Water n.d.; Hylton 1995; 1993; Warhaft et. al. 1999; Ellerby and Bedard 1999). Moreover, as will be discussed later, these approaches are currently being used by several Aboriginal communities to implement what are widely regarded as the most effective and successful community responses to sexual offending.

Some of the essential principles of community development in Aboriginal communities that have been identified include the following:

1. Recognize and maintain traditional community values and culture, including the involvement of elders in “visioning” about the community;
2. Respect the strength and wisdom of community members;
3. Insure the process and the conceptualization of the issues to be addressed are holistic;
4. Insure the process listens to community members, is flexible and respects the community “drum beat”;
5. Team work and networking must be a priority;

6. Achieve community ownership through the involvement and commitment of community members;
7. Let community involvement and participation grow at its own pace as trust, new knowledge, and skills are developed;
8. Insure community solutions are sustainable;
9. Continually validate, evaluate, and correct the process through community involvement and participation;
10. Work towards solutions, rather than towards programs or jobs as ends in themselves;
11. Insure any assistance provided to the community “facilitates” and “does with,” rather than “does for”;
12. Remain open to new ideas and directions;
13. Include awareness and skill development of community members as part of the process;

More practically, community development in Aboriginal communities has been conceptualized as involving several key steps:

1. Deciding to change;
2. Organizing to make change;
3. Establishing a core group;
4. Doing a needs assessment;
5. Making a plan;
6. Getting commitments;
7. Putting the plan into action; and
8. Evaluating the changes that are brought about as a result.

In addressing sensitive and complex issues such as sexual offending, it is clear that the community must become motivated to take charge of its own future. Once motivated, the community will need to have the opportunity and resources to analyse, to plan, and to implement solutions. This may require the building up of local infrastructures, including the identification and development of a core group of committed community leaders. Needed structures may already be in place, or they may need to be developed. Some communities may require advice, financial resources, and a variety of other supports,

for a short or long time. When it comes to “best practices” in responding to sexual offending in Aboriginal communities, or what we have preferred to refer to as “emerging best practices”, the most promising approaches have been developed by Aboriginal communities themselves using Aboriginal community development principles. Like the well known Alkali Lake experience in dealing with alcohol abuse, the two leading examples of community responses to sexual offending are the initiatives in Hollow Water and Canin Lake. In each of these cases, a similar pattern of development occurred:

1. Some members of the community decided that there was a problem and that something should be done about it;
2. A few leaders began to communicate, raise awareness and consult, network and dialogue with the community;
3. Over time, there was a growing community consensus that something needed to be done;
4. Research was undertaken by the community to assess needs and possible solutions. An important part of this research had to do with canvassing the community’s perceptions, attitudes and ideas;
5. Possible solutions were taken forward to other interested stakeholder groups and organizations within the community and beyond, such as community leaders, justice system authorities, and potential funders;
6. Despite initial reluctance and even resistance by outside authorities and funders, the community was eventually able to gain support for locally designed solutions through a process of ongoing dialogue;
7. Agreement on future directions was reached, and detailed guidelines, protocols and program designs were developed. New initiatives were then piloted, adjusted and implemented;
8. Throughout the implementation, the input of the community was continuously sought to insure the will of the community was being respected and the initiatives were achieving the results that had been hoped for.
9. Ongoing evaluation and refinement was based not only on the input of external stakeholders, but also the input of the community.

While each community is unique, it is apparent that there are many ways to assist communities in going through such a process. For example, communities that have identified sexual offending as an issue could be assisted with needed financial resources to move through the type of community process that has proved to be effective elsewhere. These communities could be offered advice and assistance from others who have been through a similar process. Tools that address sexual offending issues, such as needs assessment guides, detailed community development guides, public awareness materials, and sample protocols could be developed and made available. Resource centers could be established to house useful materials. Training opportunities could be provided for community leaders who want to make a difference in their communities and for those working with victims and offenders. Communi-

cation and networking opportunities could be developed through conferences, newsletter and other avenues. These are just a few ideas.

2. Program Development

As we have seen, there is very little experience anywhere in Canada in developing or implementing programs for Aboriginal sex offenders. A major injection of new resources is required to increase the capacities of existing programs and to develop new ones. However, it is not simply a matter of taking tried and tested program models and implementing them more broadly. On the contrary, this is a field where no one now claims to have much expertise. Therefore, in combination with some of the research initiatives we discuss later, we believe there is a need for a significant investment to design and pilot a range of program options.

What range of program options is needed to support Aboriginal sexual offenders in Canada? How many programs should there be? Where should they be located? How should they be organized and delivered? What opportunities are there for community involvement and for collaboration involving stakeholder groups? How should initiatives to deal with Aboriginal sexual offending relate to existing community and justice system structures? What program options are needed to address different types of sexual offending, different community needs, different cultural backgrounds, and different risk and need configurations? How can institutional and community programs be more effectively linked? What types of follow-up care and community support work best? In short, what works with Aboriginal sex offenders and what doesn't? There are no clear answers to any of these questions.

We have referred to some of the worthwhile initiatives taking place in Canada, including, the programs operated by the Correctional Service of Canada in Saskatoon and at the Fenbrook Institution, the Program at the Baffin Correctional Centre, the Native Clan Program in Winnipeg, the program at Waseskun House, and the community initiatives in Hollow Water and Canin Lake. Together, these programs represent a base of experience upon which further development can occur. We also looked for material internationally, however, except for two articles from the U.S. (Wyse and Thomasson 1999; Graves 1999), one from Australia (Robertson et. al 1999), and a couple of program descriptions in a source book of programs (Marshall et. al. 1998), we were not able to find any materials specifically relating to the development of treatment programs for Aboriginal sexual offenders. As previously mentioned, we do believe that there is also an important base of experience in dealing with family violence in Aboriginal communities that should be drawn upon. However, once again, we underscore the fact that programs and services for Aboriginal sexual offenders is a new field.

Finding answers will take a concerted effort. A period of creativity and innovation is required so that a variety of ideas can be tested. Many organizations will have to be involved in the design, implementation and evaluation of a range of program options before meaningful answers can be found. Moreover, in such a complex field, where high offender needs intersect with community and family needs for healing and protection, and where members of the community often harbor strong but differing views, as well as false stereotypes, the challenges associated with designing effective programs should not be underestimated. A considerable investment will be required.

Over time, the investment in program design and testing can be expected to result in the creation of a more adequate support system of people and resources. In the future, for example, one might reasonably expect to see detailed descriptions of effective program models, detailed advice about how to implement them, guides to assist communities in assessing needs and designing solutions, sample protocols, lists and inventories of available materials, programs and resource people, curriculum guides and training manuals for use in formal educational programs and in-house training programs, resource centers, research tools, public awareness materials, and the like. As previously discussed, many of these supports have been developed in the area of family violence, in no small part because of a substantial and sustained investment on the part of the federal government and many others. There is also a good deal in place relating to child sexual abuse. However, no such comparable supports are currently in place for those attempting to address Aboriginal sexual offending.

One important issue that needs to be addressed concerns how best to incorporate traditional Aboriginal beliefs and practices into the content of treatment programs for Aboriginal sex offenders. Along with many other uncertainties about where and how to structure and deliver programs, this issue has important program design implications. There has been very little experimentation with different approaches, and it is not yet possible to speak with any certainty about best practices.

In chapter 5, we identified a number of ways in which traditional Aboriginal beliefs and practices could be incorporated into sex offender treatment for Aboriginal offenders. Specifically, we wondered about which of the following ingredients would contribute to effective programming:

- Some, many, most or all of the program participants are Aboriginal;
- Some, most or all of the program content incorporates traditional Aboriginal beliefs and/or practices;
- Specific Aboriginal practices and beliefs, but not others, are incorporated into the program;
- Some, most or all of the program content is based on the standard cognitive-behavioral/relapse prevention approach to the treatment of sex offenders generally;
- The program is delivered in whole or in part by Aboriginal therapists; and
- The program has been partly or wholly developed by Aboriginal experts, including elders

At present, it is not known what combinations of these factors contribute to the most effective outcomes for Aboriginal sexual offenders. It is only through investing in the development, implementation and evaluation of a variety of approaches, that we can find out.

How to approach sex offender treatment is part of a broader debate about how traditional Aboriginal and western approaches to healing should accommodate one another.¹ There has been considerable interest in enhancing the role of traditional healing practices, both in Aboriginally controlled and mainstream health and social service programs.

This raises many issues about the degree and type of co-operation between conventionally trained personnel and traditional practitioners. Some have gone so far as to advocate integration of the two healing systems.

Western treatment approaches, if they have adjusted to traditional practices at all, have tended to treat such services as “stop gap” or transitional measures for disadvantaged sub-populations that should be available until such time as adequate professional services developed and delivered on a western model can be provided to all. This approach assumes the superiority of orthodox, western approaches, and the gradual eclipse of traditional health and healing. This approach is not accepted by the proponents of traditional health and healing in Canada, who regard it as an expression of colonial assumptions. Further, such a reductive view is not supported by current thinking, even in the western paradigm, which suggests “illness care” is over-valued and a broader understanding of health and wellness is needed. This current thinking supports many of the practices and approaches of traditional healing, including the holistic inclusion of mental, emotional and spiritual aspects in the overall design of health and healing services.

A number of possible relationships between traditional and orthodox practitioners have been identified by the Royal Commission (1996):

- Hub-Spoke Integration. In this option, traditional healers (the spokes) are trained to deliver treatment services under the supervision of western-trained professionals (the hub). Traditional practitioners are viewed as auxiliaries in an under-resourced treatment system. Their expertise is minimized, and their scope for independent practice is limited. In this model, the long-term goal is to increase the availability of western-style care services;
- Support Service Provision. In this option, traditional healers work with western experts to provide specific support services. Their services might be limited to interpretive assistance, or widened to include psychotherapeutic or ceremonial functions. Within a narrow range of such secondary functions, this model grants traditional healers an independent role in the care system. It imagines that this role will be lasting, (except insofar as traditional practices lose value for Aboriginal people), but it does not protect or promote traditional practices for their own sake;
- Respectful Independence. In this option, traditional and western health and healing services are developed and provided in parallel systems where each system has respect for the other. Referrals are made back and forth and, occasionally, both types of practitioners co-operate in providing healing services. Each system is considered to have value, each learns from the other, and traditional healing is thought of as one specialty field among many others in health care. In this model, the choice to consult one or the other of the two systems — or both simultaneously — resides with the client.
- New Paradigm Collaboration. In this (futuristic) model, traditional and western practitioners would work together to develop creative new techniques and practices that promote and restore health, using the best elements from both systems or recombining those elements into wholly new ways of approaching health and healing. This model does not advocate melding or synthesizing the two traditions into a single, integrated alternative. Rather, it imagines that both systems would be irrevocably changed by co-operation with the other, while continuing to maintain spheres of inde-

pendent practice. It also anticipates that new methods of healing, new treatments, and new therapies could emerge from the cross-fertilization.

“New Paradigm Collaboration” is attractive to many, Aboriginal and non-Aboriginal alike. Indeed, some traditional healers support this approach as an immediate strategy to achieve human health and well-being because Aboriginal philosophies of health and healing have so much to offer to a sick and de-spiritualized world. But not all practitioners agree. Some are positively disposed to exploring and expanding areas of commonality and potential collaboration, while others are sceptical and suspicious; they favour continued isolation from orthodox healing and Canadian law.

The grounds for co-operation between health and healing systems can be exaggerated. Traditional healing and orthodox healing differ in profound ways. The idea of increased co-operation has many strong opponents who are concerned about the possibly negative results of integrating traditional and orthodox health care systems too quickly or too tightly

Historically, the practitioners of western healing have argued the general superiority of their methods and often shown little regard for alternatives or complementary practice. It is not surprising then, that many traditional healers view “co-operation” as code for their co-option and domination. However, as western orthodoxy changes in response to pressure for reform, the ground for two-way, respectful co-operation may widen.

Based on these considerations, the Royal Commission (1996) felt the appropriate goal for public policy in the short- and medium-term was “respectful independence.” To achieve this goal, traditional healing will require support for internal development and self-regulation. Western practitioners will require strong professional leadership to encourage respect for and cooperation with Aboriginal healers and elders. In the long-term, it will be up to future governments, practitioners in both healing systems, and clients to oversee the terms of cooperation between the two systems. We believe it is appropriate to experiment with different models and approaches, as circumstances permit, so that a variety of options can be more clearly defined and more closely monitored to determine their effects.

Thus far, this discussion of program development needs has focused on the treatment needs of Aboriginal sex offenders. However, the needs for program development are much broader. In addition to treatment programs, there are also gaps in culturally appropriate programs to strengthen Aboriginal families and communities, contribute to the maintenance of healthy relationships, and prevent violence, including sexual violence. Here to, there is a need for creativity, experimentation, evaluation and, over time, the development of a range of effective supports for local community initiatives. Such supports might include, for example, public awareness materials, guides for school- and community-based education initiatives, best practice materials relating to crime and violence prevention, and suggested strategies to effectively promote the transference of traditional knowledge and values.

3. Research

The community development and program development needs and priorities we have discussed earlier in this section have extensive implications for research.

A comprehensive and multifaceted research program is, we believe, required. Among the main issues that need to be addressed are the following:

1. Victimization and Offending Patterns. Little is known about Aboriginal sexual offending rates, about patterns over time, or about the geographic distribution of offences. Even less is known about Aboriginal victimization rates, about victimization patterns over time, or about the geographic distribution of victimization;
2. Criminal Justice System Involvement With Offenders and Victims. Little is known about the proportion of Aboriginal sexual offences reported to the police, how many offences are not reported, and why. Nor is there any significant information about how Aboriginal sexual offenders are treated at various stages of justice system processing, from police involvement to decisions made by correctional authorities. Basic information about the number of Aboriginal adult and juvenile sexual offenders in correctional institutions, or on probation or parole, is not routinely collected or readily available. Gaps in information also exist with regard to the involvement of the criminal justice system in addressing the needs and concerns of victims;
3. Offenders and Victims. More information is needed about the socio-demographic and other characteristics of victims and offenders. In particular, there is very little information available about differences in offending and victimization patterns, if any, among First Nations, Metis and Inuit;
4. Community Perceptions. More information is needed about how Aboriginal communities perceive the problem of sexual offending and about communities' preferences for dealing with the issue.
5. Needs and Risk Assessment. Research is needed to develop and evaluate culturally appropriate tools for assessing the needs and risk of re-offence of Aboriginal sex offenders;
6. Treatment Program Development. Research is needed to support the development of effective, culturally appropriate programs for Aboriginal sexual offenders.
7. Treatment Program Effectiveness. Significant gaps in knowledge exist about the effectiveness of current sex offender treatment programs and about the necessary ingredients that contribute to successful programs. Further research is required to determine the range of program options that is required to effectively match Aboriginal sex offenders with appropriate institution- and community-based support services. Moreover, further research is required to establish how many Aboriginal sex offenders refuse treatment or drop out and why;
8. Program Capacity and Availability. There is no inventory of available institutional and community-based programs for Aboriginal sexual offenders. Basic information about the number and characteristics of Aboriginal sex offenders who currently receive treatment is also not available. Furthermore, it is not known how many Aboriginal sex offenders require treatment, and how much program capacity would be required to meet these needs;

9. Prevention and Promotion. Research is required to generate knowledge about the prevention of sexual violence and the promotion of healthy families and communities, and to support the development, implementation and evaluation of prevention and promotion programs; and
10. Human Resources. There is little information about how to attract, train and retain Aboriginal staff in the areas of treatment, prevention and community development.

The need for research in these areas, is not only a need for conventional social science research. There is also a need to tap and utilize Aboriginal knowledge and expertise. This requires the use of culturally appropriate research tools and techniques, as well as culturally appropriate knowledge dissemination strategies. This is an important research topic in its own right, one which is beginning to be addressed by experts in Aboriginal research (e.g., Benson et al 2000).

4. Human Resources

Effective implementation of the broad community development, program development and research strategies we have recommended has extensive implications for both Aboriginal and non-Aboriginal human resources. Simply put, who is going to do the important work that has been outlined?

Much has been written about the importance of investing in the development of Aboriginal human resources to address a broad range of social, economic, political and cultural aspirations of Aboriginal nations and communities (e.g., Royal Commission 1996). The needs that have been identified in human services fields such as health, justice, children's services, addictions, and mental health closely parallel the requirements to address Aboriginal sexual offending. For this reason, our comments will be brief. Yet, there is one important difference. In comparison to these other fields, there is an even smaller base of existing programs and expertise to build upon.

While there will be a need for increased human resources, the resources required are highly specialized – elders, traditional healers, program development staff, community development experts, researchers, treatment staff, and many others. Recruitment, retention, training and on-going development of staff must be an essential component of any overall strategy.

Existing Aboriginal and non-Aboriginal staff need opportunities to development their experience, knowledge and skills. New staff will also be needed. In particular, there is an urgent need to attract Aboriginal staff to work in addressing Aboriginal sexual offending.

Formal educational programs are important. In particular, we believe Aboriginal post-secondary institutions and other Aboriginal organizations should be supported to develop and implement education and training programs. We also favor support for the development of training guides and curricula, and efforts to “train trainers.”

In addition to more formal education and training programs, the development of human resources also requires conferences, workshops, newsletters, the establishment and support of professional associations and interest groups, and the cultivation of other opportunities for communication and networking for involved in this highly specialized and complex field.

The Next Steps

We have identified many requirements, many challenges, and many opportunities. We have also sought to identify gaps and needs in a manner that would allow all interested organizations and governments to consider the role they might play in addressing Aboriginal sexual offending in Canada. We have not presumed to prioritize our recommendations, or to suggest who should do what. At the same time, we do have ideas about some next steps that we believe could be very helpful in raising awareness, and gaining interest and commitment among those who will share responsibility for finding solutions. In our view, awareness and commitment are the two key building blocks of any successful action plan.

Focusing increased attention of Aboriginal and non-Aboriginal stakeholders on the problem of Aboriginal sexual offending in Canada could be achieved in several ways:

- Organizing a national conference or meeting on Aboriginal sexual offending that would bring together Aboriginal organizations and governments, Canadian governments, and experts in the field;²
- Distilling the main findings of this review into a short, accessible booklet that could be widely disseminated among interested organizations and communities; and
- Arranging meetings with key individuals and organizations to brief them on the results of this review and to discuss next steps.

Consideration might also be given to building partnerships and coalitions among interested organizations. One method to achieve this would be to form an interest group, task force or committee to develop a plan of action. Such a group might be made up of representatives from national Aboriginal organizations, Canadian governments, and experts in the field. As an alternative, or in parallel with this coalition building, a core group of communities concerned about the problem of sexual offending, or already working in the area, might be brought together with the support of governments, the Aboriginal Healing Foundation, and other Aboriginal organizations. This would allow for the development of a focused plan of action among those who are most knowledgeable and involved. Such an approach could result in the development of one or more centres of excellence that could then assist others with community development and training.

In addition to the Aboriginal Healing Foundation, there are a number of other important organizations that may wish to be involved: National and regional Aboriginal organizations, Aboriginal organizations and professional associations concerned with health, healing and the prevention of violence, educational institutions, research institutes, Solicitor General Canada, the Correctional Service of Canada, provincial and territorial departments of justice, policing agencies, including the RCMP, and health and mental health organizations, including Health Canada. Research in Aboriginal communities suggests there is widespread interest in developing creative partnerships that will help to address community concerns, including more creative and effective ways of dealing with Aboriginal offenders who are returning to their communities (e.g., Saulis et. al. 2000).

Support is needed for research, program development and community initiatives to address the many gaps and needs that have been identified. A number of organizations, particularly Canadian governments, national research bodies, the Aboriginal Healing Foundation, and others, may be in a position to consider establishing dedicated funding programs to address Aboriginal sexual offending. At the very least, the terms of reference for existing programs could be adjusted to encourage initiatives in a few key areas, such as the following:

- Community Development. Projects to assess needs, consult with community members, develop partnerships, and devise community-based solutions need to be supported;
- Program Development. Support is needed to design, implement and evaluate a variety of approaches to providing sex offender treatment for Aboriginal offenders, particularly community-based and follow-up programs that incorporate traditional Aboriginal beliefs and practices;
- Research. Basic information is needed to get a better understanding of the nature and extent of Aboriginal sexual offending and victimization in Canada, who is receiving treatment, who isn't, and with what effects;
- Human Resources. Funding to increase the number and expertise of Aboriginal people working in the field should be a priority. We also favor any efforts that would recognize the individuals and organizations that are leading the way.

We also believe that there are several specific “infrastructure” type projects that would be of great value to many individuals and organizations who are working in the field. These projects would, we believe, help to improve communication, transfer knowledge, and create momentum:

1. A national inventory of treatment programs for Aboriginal sexual offenders. Such an inventory could include detailed program descriptions, information about how and why programs were developed, and advice about key obstacles and how they were overcome;
2. A national resource centre. This could be either a stand alone centre sponsored by an Aboriginal organization, or one organized in conjunction with an existing resource centre. Those involved in community development, program development, research and human resources activities need access to timely, accurate and relevant information;
3. A community development guide. Although some guides exist, for example, the excellent guides prepared by Bopp and Bopp (1997a; 1997b), they address the issue of sexual abuse. There are numerous sensitive and complex issues specific to Aboriginal sexual offending that are not covered in any existing guide. Existing guides could be used as a starting point, but there is a need to develop more directly relevant support materials;
4. Public awareness materials. A key to action is raising awareness about the issue of Aboriginal sexual offending. Even basic materials are not now available. If they were developed, many organizations and communities would be able to make use of them; and

5. Education and Training Materials. Aboriginal and non-Aboriginal staff working in this complex and highly specialized field, as well as new staff and those working in allied areas, require current and comprehensive information to assist them in doing their jobs more effectively.

Conclusion

After an extensive review of Aboriginal social policy issues, the Royal Commission on Aboriginal Peoples (1996, Vol. 3; p. 6-7) identified three interrelated objectives that Aboriginal social policy should seek to achieve:

1. To address urgent concerns through institution building and program development congruent with the emergence of self-government;
2. To pave the way for Aboriginal self-government by enhancing the capacity of Aboriginal citizens to engage in nation building; and
3. To stimulate adaption of mainstream institutions to provide services in a manner that recognizes and affirms Aboriginal identity, involves Aboriginal people in governance and decision making, and assumes a complementary and supportive role in the development of Aboriginal service institutions.

In responding to growing concerns about Aboriginal sexual offending, these are the bedrock principles that must underpin any strategy for the future.

Building strong families and strong communities is a long-term process. Short-term, ill-conceived responses can do more harm than good. In particular, if victims are encouraged to disclose the abuse they have suffered, adequate and appropriate services must be available for victims and offenders. If not, many will be left even more severely damaged. A strategy that builds knowledge, trust and community capacity over time will be much more effective in the long-term.

In many Aboriginal communities, it is only in the last 5-7 years that there has been any open discussion about the problem of sexual abuse. The main challenges still often involve moving beyond myths and denial. Yet the problems are serious. If Aboriginal communities and nations are to achieve their vision for the future, these problems must be addressed.

Notes

1. What follows borrows extensively from the Royal Commission (1996).
2. The Correctional Service of Canada (1996) organized a successful conference in 1995 that focused on sex offender treatment issues. A gathering of community organizations addressing Aboriginal sexual abuse was organized in 1999 by the Native Clan Organization, Hollow Water, and the Department of Solicitor General Canada (Ellerby and Begard 1999).

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Appendix A

Program Profiles: Sex Offender Treatment Programs

Appendix A Program Profiles

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Introduction

As discussed in the body of the report (chapter 6), there is no inventory of sex offender treatment programs in Canada, nor is there any inventory of Aboriginal sex offender treatment programs. Nonetheless, some programs do exist. In an attempt to compile as comprehensive a listing as possible, we reviewed the sex offender treatment literature, contacted federal, provincial and territorial justice officials, and requested information from Aboriginal organizations, governments and communities. We also contacted experts in the field of sex offender treatment. Through this communication and networking, we attempted to identify every Aboriginal-specific sex offender treatment program in Canada. While we have no way of knowing whether we succeeded in identifying all the programs that are currently operating, we are reasonably certain that most of the programs, and all of the leading programs, have been identified.

We looked for programs where:

- Some, many, most or all of the program participants were Aboriginal;
- Some, most or all of the program content incorporated traditional Aboriginal beliefs and/or practices;
- The program was delivered in whole or in part by Aboriginal therapists; and
- Program development had been completed by Aboriginal experts, including elders.

Detailed program descriptions of all the Aboriginal-specific sex offender programs will be found in this Appendix. We have also included a sample of the non-Aboriginal institutional and community-based sex offender treatment programs that are available, as well as a number of innovative programs that we felt had particular promise.¹

The program descriptions follow a standard format:

- Name of the organization;
- History and current status of the program;
- Philosophy and purpose;
- Program format;
- Program content;
- Assessment tools used;
- Operation;
- How Is Aboriginal Focus Achieved?
- Indications of effectiveness; and
- Contact information.

Detailed information was not available for many of the programs we included. We were restricted to using information that was fairly readily available and, sometimes, this information was not very complete. We believe the compilation of more detailed information about these and other programs would be of considerable value.

Our survey identified only a few programs anywhere in Canada. Most of the programs are institutional programs that have small capacities. Some are experimental or in the planning stages, while a number of others have been discontinued. We identified only a few community-based programs. These are mostly small programs that serve local communities. There are vast areas of the country where no specialized programs of any kind appear to be available. In addition, nearly all the programs we identified had no capacity to deal with women or young offenders.

Forensic Behavioral Management Clinic: Native Clan, Winnipeg, Manitoba

History and Current Status of the Program:

This program delivers comprehensive assessment and treatment services for sexual offenders. There are several facets to the program, including a treatment program at Stony Mountain Penitentiary, a relapse prevention/maintenance program at Rockwood Institution, and a community-based program that provides individual, group and couple counseling. In 2000-2001, the community program served 59 offenders, 28 of whom were Aboriginal. The program at Stony Mountain Penitentiary served 18 offenders, 10 of whom were Aboriginal. The program at Rockwood Institution served 38 offenders, 14 of whom were Aboriginal. In all, about 50 Aboriginal sex offenders are treated each year..

Philosophy and Purpose:

The program works towards the reduction of victimization by providing offenders with supportive therapeutic experiences that match the individual's level of risk and need.

Program Format:

The clinic provides programming primarily to high risk/need offenders of both Aboriginal and non-Aboriginal ancestry. Services are also provided for juvenile/young offenders, mentally handicapped offenders, and female offenders. Assessments are conducted for a variety of purposes including case management, supervision and to assist treatment providers. Treatment programs are individualized and depend on the client's level of risk.

Program Content:

The treatment program encompasses a broad range of areas focused on addressing offender specific issues, as well as general personal functioning. The primary treatment modules include: 1) accepting accountability for offending history, 2) developing insight into the offending cycle, 3) modifying deviant sexual arousal patterns, 4) managing and modifying inappropriate sexual fantasies, 5) challenging denial, minimization, and cognitive distortions, 6) developing awareness of the trauma experienced by survivors of sexual abuse, 7) developing empathy, 8) developing insight into emotional, cognitive, behavioral and situational risk factors that contribute to offending, 9) developing functional coping skills, 10) dealing with personal victimization, 11) addressing family of origin issues, 12) learning about human sexuality, 13) dealing with attitudes towards women, 14) relapse prevention, and 15) couple counseling.

Assessment Tools Used:

Clinical interviews focus on developing a comprehensive, developmental and social history of each offender. The history of inappropriate sexual behavior is reviewed. The client's level of accountability and insight related to their sexual offending behavior is assessed. Self-report measures are taken to assess a

variety of areas, including: anger expression, psychosexual history, risk factors, and offence cycle. Phallometric assessments are also taken. Sexual arousal patterns are evaluated through penile plethysmography.

Operation:

Assessment and treatment services are offered on a fee for service basis. In some cases, funding may be arranged through the Correctional Service Canada, Manitoba Justice, Legal Aid Manitoba, the Medical Services Branch of Indian Affairs, or Winnipeg Child and Family Services.

How is Aboriginal Focus Achieved?

Traditional healing and ceremonial healing rites are integrated into the treatment program. This integration helps Aboriginal offenders invest in the treatment process and remain engaged in the treatment process, and demonstrates recognition of and respect for Aboriginal culture and spirituality.

Indicators of Effectiveness:

For individuals who had completed the clinic's community-based sex offender program, there were improvements in return rates for Aboriginal and non-Aboriginal offenders. This suggests that with respect to sexual recidivism, all clients benefitted from the treatment. However, Aboriginal offenders were significantly less likely to complete the program and significantly more likely to recidivate during treatment. A further evaluation of the program is now underway.

Contact Information:

Dr. Lawrence Ellerby (Clinical Coordinator)
(204) 943-7357

The Clearwater Sex Offender Treatment Program: Saskatoon

History and Current Status of the Program:

This treatment program is an institutional program located within the Regional Psychiatric Centre in Saskatoon. It is operated by the Correctional Service of Canada and serves approximately 40 Aboriginal and non-Aboriginal offenders a year.

Philosophy and Purpose:

This program serves high risk and high need sexual offenders whose treatment needs could not be met in their parent institution.

Program Format:

Individual and group therapy are offered. Two components are used in the treatment approach: 1) cognitive-behavioral strategies, and 2) and spiritual ceremonies and cultural practices.

Program Content:

Clients receive both individual and group treatment pertaining to social skills, human sexuality, victim awareness/empathy, emotions management, covert sensitization, arousal reconditioning, masturbatory conditioning, spiritual ceremonies, and cultural practices.

Assessment Tools Used:

This program has played a leadership role in the use, evaluation and refinement of a wide variety of tools for assessing needs and predicting risk.

Operations:

The staff consists of a multi-disciplinary team, including an Aboriginal healer and an assistant.

How is Aboriginal Focus Achieved?

There is no distinctly separate Aboriginal sex offender program. The relationship between the Aboriginal healer and the other treatment team members is collaborative. The healer provides sweat lodge ceremonies, one to one counseling, drumming, singing, dancing, fasting, and Whoospagan healing ceremonies.

Indicators of Effectiveness:

A follow-up evaluation has been completed showing positive treatment effects for Aboriginal and non-Aboriginal offenders. Extensive work is also being completed to determine the validity of existing assessment and risk prediction instruments.

Contact Information:

Terry Nicholaichuk, Ph.D.
Regional Psychologist, Prairie Region
6th Floor, 230-22nd Street East
Saskatoon, Saskatchewan S7K 0E9
Tel: 306-975-4334
Fax: 306-975-6611
E-mail: nicholaichuktp@CSC-SCC.GC.CA

Aboriginal Sex Offender Healing Program: Bowden Institution, Alberta

History and Current Status of the Program:

This program in the federal penitentiary at Bowden, Alberta was initiated in September of 1996, but it no longer operates. It provided cognitive-behavioral therapy for groups of 12 Aboriginal and non-Aboriginal inmates.

Philosophy and Purpose:

This program operated on a cognitive-behavioral design in accordance with the standards established by the Correctional Service of Canada.

Program Format:

Sex offender re-training was delivered holistically, encompassing the four major life areas of the medicine wheel (physical, emotional, spiritual and mental).

Program Content:

Offenders discussed their sexual behavior and their own feelings of victimization. They were encouraged to identify the likely feelings of their victim. Offenders discussed the emotional and attitudinal precipitants of their sexual offence behavior, and discussed what situations and emotional states they should avoid. Offenders were also encouraged to discuss their sexual fantasies. A follow-up was provided to individuals after completion of program.

Assessment Tools Used:

The Kelly Grid test was used to assess participants before entering the program.

Operation:

The program operated on a group format with up to 12 individuals per treatment group. Staff consisted of CSC staff as well as an Elder. There was also community involvement in the program. Outside resource people, such as healers, were brought in.

How is Aboriginal Focus Achieved?

The program was a blend of core program teaching with service being provided by an Elder to cover issues related to spirituality and culture. This was done through use of a medicine wheel format, with the four major life areas (physical, emotional, spiritual and mental) being addressed.

Indicators of Effectiveness:

Two knowledge questionnaires were given to individuals before and after participation in the program. The Kelly Grid test and individual interviews were also used.

Contact Information:

Bowden Institution

Intensive Sex offender Program for Aboriginal Men: Mountain Institution, British Columbia

History and Current Status of the Program:

This program provides intensive sex offender treatment for Aboriginal men within a federal penitentiary. One five month program is offered each year, with up to 10 Aboriginal sex offenders receiving treatment each year.

Philosophy and Purpose:

The program is based on the holistic model, where participants learn, experience and develop skills to maintain healthy sexuality and an offence-free lifestyle. The program, which is offered once a year, is staffed with CSC personnel and an Aboriginal spiritual advisor.

Program Format:

Aboriginal culture, spirituality and healing are the main focus of this five month program.

Program Content:

Program content includes: a water ceremony, learning the seven sacred rules of life, traditional prayers, cognitive restructuring, rational emotive therapy, sexuality and human relationships, the sexual offending behavior cycle, victim empathy, and the construction of an autobiography.

Assessment Tools Used:

A comprehensive psychological assessment is completed prior to entry into the program and also after the program is completed. This includes the use of a battery of psychometric and psychological tests.

Operation:

The treatment team consists of three facilitators and visiting elders.

How is Aboriginal Focus Achieved?

The program provides a safe and healing environment that assists participants to identify and correct dysfunctional behaviors. This is done through the use of Aboriginal cultural and spiritual activities, which serve as the underpinnings of the program content and goals.

Indicators of Effectiveness:

This program considers success difficult to achieve. No formal follow-up is completed. Sex offenders are encouraged to practice relapse prevention and to see their recovery as a life-long process.

Contact Information:

Donna Watson, Coordinator
And Arnold Ritchie, Elder
Mountain Institution
4732 Cenetary Road
Box 1600
Agassie, British Columbia
V0M 1A0
(604) 796-2231

The Warkworth Sexual Behavior Clinic (WSBC): Warkworth Institution, Toronto

History and Current Status of the Program:

This program was inaugurated in June 1989 at Warkworth Institution, a medium security federal penitentiary located approximately 1 1/2 hours northeast of Toronto. Over half of the offenders serving sentences in Warkworth Institution are convicted of a sexual offence or a violent offence in which sexual motivation or behavior was considered to be important.

Philosophy and Purpose:

The treatment program offered in the Warkworth Sexual Behavior Clinic is intended to reduce the likelihood of recidivism, especially for violent or sexual offences.

Program Format:

The program is designed on a cognitive-behavioral model. It also relies heavily on the principles of relapse prevention theory. The program utilizes a group therapy format as an economical means of service delivery and in order to make the most of limited resources. Groups meet for approximately 3 1/2 hours a day, five days a week, during the course of the treatment program. Groups are typically made up of ten to eleven offenders. The groups include both rapists and child molesters. Groups can include first time members or those who are going through the program for the second or third time.

Program Content:

The program provides: 1) treatment to sex offenders incarcerated at Warkworth Institution in order to reduce the risk these offenders pose upon release, 2) assessment for sex offenders incarcerated at Warkworth Institution in order to determine their risk for re-offense and their needs for treatment, 3) assistance in case management and Parole Board decision making, 4) training of professionals by providing a setting for practice and internships; and 5) development of improved treatment and assessment methodologies for use with sex offenders.

The treatment program at the Warkworth Sexual Behavior Clinic has five objectives: 1) to encourage the offender to accept responsibility for his sexual offending, 2) to reduce any deviant sexual arousal he showed in his phallometric assessment, 3) to demonstrate empathy for his victim(s), 4) to develop an understanding of his offense cycle, and 5) to develop and implement a proactive and effective relapse prevention plan.

Assessment Tools Used:

The risk assessment tool used is the multifactor assessment of sex-offender risk for re-offense (MASORR). The MASORR is based on static predictors of re-offence.

Operations:

The program provides services to approximately 75 sex-offenders per year. Costs of treatment and assessment services for each participant are between \$6000 and \$7000. Participants cover most of this cost by working five days per week for the duration of the five-month treatment program in a work placement at the institution. However, the program also has stable external funding and support. There are currently nine full-time staff involved in the program.

How is Aboriginal Focus Achieved?

There is no specific Aboriginal focus offered in this program.

Indicators of Effectiveness:

A comprehensive evaluation of the program, including a follow-up study has been completed. Offenders did show improvements during treatment, but these were not related to outcome measures, including recidivism.

Contact Information:

Dr. Michael Seto
Centre for Addictions and Mental Health
Toronto
Michael_Seto@camh.net

Penetanguishene Sex Offender Program: Oak Ridge Mental Health Center: Ontario

History and Current Status of the Program:

This sex offender program is run within the Oak Ridge Division of the Mental Health Center at Penetanguishene. Clients are men who have been charged with or convicted of a sexual offense that involved actual physical contact with a non-consenting victim.

Philosophy and Purpose:

The program operates on a cognitive-behavioral model.

Program Format:

Individual and group programs are offered.

Program Content:

The treatment program offered at this centre, consists of the following components: 1) problem identification- this treatment is offered in a group format for 5-10 clients at a time. The purpose of this group is to develop a theory, agreed upon by all group members, including the group leader, about the factors involved in sexual offending, 2) relapse prevention- the purpose of this group is to help each client examine his offense cycle and to help him change his behavior by learning to anticipate, recognize and cope with the problems of relapse at any point in the offense cycle, 3) arousal management- the purpose of this group is to help clients alter their deviant sexual preferences and to teach techniques that can be used to control deviant preferences in the future, 4) basic sexual education and values- this program is designed for lower functioning participants and covers such topics as birth control, pregnancy, relationships, morality and the law, and 5) laboratory behavioral treatment- this is individual behavioral therapy run in the laboratory of the research department.

Assessment Tools Used:

The preliminary assessment involves an interview, completion of questionnaires, a review of information from other sources, and at least one phallometric assessment

How is Aboriginal Focus Achieved?

This is not an Aboriginal-specific program.

Indicators of Effectiveness:

No information available at this time.

Contact Information:

Ms Catherine Cormier, Research Department
Penetanguishene Mental Health Center
Oak Ridge Division, 500 Church Street
Penetanguishene, Ontario, Canada
(705) 549- 3181

Mamisaq Qamutiik: Baffin Correctional Centre: Nunavut

History and Current Status of the Program:

Sexual offences and family violence are common in Nunavut. Many of those in the correctional center must begin a process of healing before they can begin to deal with the specific problems that must be overcome to help them live law-abiding lives. This program assists offenders to work on their spiritual, mental, physical and emotional growth. The program treats 50 to 60 Inuit offenders each year.

Philosophy and Purpose:

This program provides a program to promote healing (Mamissaq). Appropriate security and management are also necessary. The program seeks to help offenders to respect others and the law. Providing assistance and management in ways that respect the culture and language of Nunavut is also a focus. The goal is to work with offenders, the communities and victims to bring about safety and family reintegration.

Program Format:

The sex offenders treatment program (men's group) is offered bi-weekly for a six-week period in a closed group therapy format. A maximum of ten inmates are able to participate at a time.

Program Content:

Phase one, the first part of the group therapy process, involves full disclosure of the sexual offences for which the individual has been convicted. The purpose is to identify denial and/or minimization of the seriousness of the offences. At this stage, the participants must fully accept responsibility for what they have done.

Phase two, the second part of the group therapy experience, involves cognitive restructuring. Participants must recognize the deviant sexual thoughts that allow them to continue denying or minimizing, as well as the myths and prejudices about victims that they harbor.

In phase three, the focus is on self-expression and interpersonal skills. Participants become aware of the impact of communication on themselves and others.

In phase four, the focus is on anger management. The participants learn about different options for expressing anger and aggression, and the physiological and psychological effects of each.

In phase five, treatment focuses on victim empathy. Each participant is asked to speak about the consequences of sexual assault on victims in general and on his own victims.

Phase six focuses on recapping and relapse prevention. The knowledge participants have acquired is directly applied to each individual situation so that participants can learn to recognize their criminal cycle.

Assessment Tools Used:

Referrals are made through the classification system of the correctional centre, using a risk management tool called ORAMS.

Operation:

Sessions are co-facilitated by the division psychologist and a traditional counselor.

How is Aboriginal Focus Achieved?

The program seeks to encompass all aspects of traditional Inuit culture, including: values, world view, language, social organization, knowledge, life skills, perceptions, and expectations.

Indicators of Effectiveness:

No evaluation has been completed.

Contact Information:

Dr. Wayne Podmoroff (psychologist)
(867)979-8121

The Ma Mawi Wi Chi Itata Family Violence Program, Stony Mountain Penitentiary, Manitoba

History and Current Status of the Program:

The Ma Mawi Wi Chi Itata Family Violence Program has operated in Winnipeg since 1987. Originally, the program provided services to only women and children, however the program has expanded to include programming for men. In 1993, The Family Violence Program contracted with Correctional Service Canada, to deliver the program to Aboriginal inmates at the Stony Mountain Federal Penitentiary.

Philosophy and Purpose:

This program is designed to help Aboriginal men who have a history of involvement in family violence.

Program Format:

The program consists of thirty-seven sessions that offer a combination of mainstream and traditional teachings, as well as closed group sessions, and individual and Elder counseling.

Program Content:

Through closed and open group sessions, participants are given the opportunity to identify the physical and emotional cues that precede a violent episode.

Assessment Tools used:

No information available at this time.

Operation:

Sessions are facilitated at the penitentiary using staff resources provided through the program.

Indicators of Effectiveness:

An evaluation of the program was completed in 1996. Interviews were conducted with forty-six inmates who were past participants. Staff members involved in the program were also interviewed. Results from this evaluation indicated that about 63% of the men who participated in the program were motivated by a desire to learn more about themselves and their violence. The cultural component of the program brought about the greatest degree of satisfaction among the participants. It was concluded from this evaluation that there is a need and a desire for an Aboriginal-specific family violence program within the penitentiary.

How is Aboriginal Focus Achieved?

Throughout the program, information is contextualized within the Aboriginal experience. This is done through the teaching of Aboriginal history, traditional ways and ceremonies. Topics discussed in the program follow the model of the medicine wheel. Each direction represents a different task or focus. For example, the eastern direction represents truthfulness and new beginnings.

Contact Information:

Ma Mawi Wi Chi Itata
Winnipeg, Manitoba

The Tupiq Program: Fenbrook Institution, Ontario

History and Current Status of the Program:

The Tupiq Program is a new holistic, comprehensive, and multi-faceted program that relies on a team of highly skilled facilitators for its delivery. The primary language of the program is Inuktitut. Inuit culture and healing approaches are integrated at every level. The treatment program incorporates traditional and culturally-based skills, Inuit healing approaches that promote culturally relevant change processes, and the involvement of the offender's family and community. The program is recognized by the National Parole Board and delivered by Inuit facilitators and counselors.

Philosophy and Purpose:

The Tupiq Program is based on a belief that institutionally delivered correctional programs are only one part of a coordinated response to the problem of abuse in Inuit communities. Inuit offenders incarcerated at Fenbrook Institution proposed a name for a new Inuit correctional program. This name was "tupiq," meaning tent. To the Inuit offenders, the tupiq is a strong symbol of their culture's strength and adaptability. The goal of this program is to build a practical, resilient and relevant correctional program for Inuit offenders.

Program Format:

Three poles hold up the traditional Inuit tupiq or tent, and three major themes work at a number of levels to support the Tupiq Inuit treatment program. The poles anchor the program and tie all its components together. The three poles (themes) are: 1) self, 2) responsibility, and 3) community. Each pole is further divided into components (sessions), which interact to reinforce skills, attitudes, and behaviors. These components are: 1) treatment groups, 2) skills groups, and 3) individual counseling.

Program Content:

The program entails 16 weeks of group and individual sessions for a total of 230 contact hours. Components are divided into major content modules, which focus on the development of core skills and treatment goals. There are 13 modules including: 1) goals, 2) values, 3) culture, 4) problem solving, 5) abuse awareness and prevention, 6) abuse disclosure and autobiography, 7) interpersonal communications, 8) victim empathy, 9) anger and emotion management, 10) alcohol and drug abuse, 11) sexuality and relationships, 12) parenting, and 13) relapse prevention.

The relapse prevention component is linked to the offender's home community.

Assessment Tools Used:

A variety of tools are used to assess the integration of the program content at all stages of the program. Qualitative and quantitative measurements include: semi-structured tests, open-ended interviews, on-going assessment activities, measurable behavioral objectives, and learner perspective assessment.

Operations:

The program is facilitated by staff, including Inuktitut speaking facilitators, Inuit Healers, and an on site program coordinator and clinical supervisor. Participation is limited to 9 Inuit offenders each year program.

How is Aboriginal Focus Achieved?

The Tupiq program is a holistic program that integrates Inuit culture, language and healing approaches at every level.

Indicators of Effectiveness:

The program was just recently begun.

Contact Information:

Ms. Ellen Hamilton (Coordinator)
Fenbrook Medium Institution
P.O Box 5000
Beaver Creek Drive
Gravenhurst, Ontario/ PIP- 1W9
(705) 687- 1896

Hollow Water Community Holistic Circle Healing: Manitoba

History and Current Status of the Program:

This program operates as a community initiative in Hollow Water, Manitoba. It provides services to approximately 30 Aboriginal sex offenders each year. Services are provided to men, women, and youth.

Philosophy and Purpose:

The program uses a cognitive behavioral approach to treat sex offenders in a holistic manner, and it draws extensively on Aboriginal cultural teachings and practices. An important feature of the approach is a belief that sex offenders should not be treated in isolation from their victims and communities.

Program Format:

Both individual and group programs for offenders and victims are provided.

Program Content:

The program, referred to as holistic circle healing, involves a 13 step process: 1) disclosure, 2) establishing safety for the victim, 3) confronting the victimizer, 4) supporting the spouse/parent, 5) assisting the families, 6) meeting of the assessment team (RCMP, Crown counsel, community representatives, etc.), 7) conducting circles with the victimizer, 8) conducting circles with the victim and victimizer, 9) preparing the victim(s), 10) preparing all of the families, 11) conducting a special gathering, 12) completing a sentencing review (healing contract), and 13) conducting a cleansing ceremony.

Assessment Tool Used:

No formal assessment tools are used. Assessments are completed through the participative processes described above.

Operation:

Hollow Water Child and Family Services operate the program.

How is Aboriginal Focus Achieved?

This is achieved through healing contracts, cleansing ceremonies, special gatherings, and community involvement.

Indicators of Effectiveness:

Although no information is available at this time, the program has been positively received by the community and by justice system officials. An evaluation is currently being conducted.

Contact Information:

Ms. Lena Bushie, Director
Hollow Water Child and Family Services
Community Holistic Circle Healing
Hollow Water, Manitoba
R0E 2E0
(204) 363-7213

The Canim Lake Family Violence Program, British Columbia

History and Current Status of the Program:

The Canim Lake Band is part of the Secwepemec (Shuswap) Nation in the interior of British Columbia. The Canim Lake Family Violence Program was developed in 1994. The history and development of the CLFVP has strong roots in the community. With a high incidence of sexual abuse, suicide, interpersonal violence, alcohol abuse and family violence in the community, the community felt that there was a need for a program that focused on sexual abuse issues. This program is a blend of traditional and professional interventions. It receives about 450 referrals from the community each year relating to a full range of child and family violence and abuse issues. Since 1993, services have been provided to 11 sex offenders, including men, women, and youth.

Philosophy and Purpose:

The program addresses the needs of the community by assisting individuals, families and the community find the inner strength needed to confront family violence. The program was developed to provide an alternative, community-based treatment program for both offenders and victims of sexual abuse. The goals of the program are for offenders in the community to become accountable for their actions and to attend treatment. The intent is to prevent any future offending. A unique feature of this program is its deferred reporting period. This is a two week period after an offence has occurred during which the offender has an opportunity to come forward and self-disclose. Those who come forward are not prosecuted provided they: 1) agree to participate in the program, 2) are considered by the community oversight committee to be an appropriate candidate following an assessment of risk, and 3) fulfill all conditions of the program.

Program Format:

The program provides assessments, treatment and follow-up services to sexual abuse offenders and victims.

Program Content:

The program is based on a comprehensive seven-phase intervention for offenders and victims of sexual abuse.

Operations:

Hiring of staff is done by the administrator of the Canim Lake Family Violence Program and by the Chief and Council of Canim Lake. Currently, six trained individuals assist in providing services under this program.

How is Aboriginal Focus Achieved?

The traditional Aboriginal spiritual components of healing are not a specific part of the program, however, individuals are free to implement their own spiritual beliefs and practices as they see fit. The program operates on a restorative justice model.

Indicators of Effectiveness:

The community has taken significant strides in facing sexual abuse and providing support and treatment for both the victim and the offender. Community input suggests the program has been far more effective than conventional justice system interventions.

Contact Information:

Ms. Wilma Boyce
Director
Box 1030
100 Mile House
Canim Lake, British Columbia
V0K 2E0

Circles of Support for High Risk Sex Offenders: Mennonite Central Committee: Ontario

History and Current Status of the Program:

The Mennonite Central Committee (MCC) in Ontario, under a contract with the Correctional Service Canada, initiated a pilot project for high-risk offenders in the spring of 1996. The program is now being expanded elsewhere in Ontario.

Philosophy and Purpose:

Based on a Judeo-Christian restorative justice philosophy, the purpose of this project is to reduce the risk of re-offence by individuals convicted of sexual offenses, to ease their transition into the community, and to speak to the fears of victims.

Program Format:

The program involves community members forming support groups or “circles of support” with potentially high profile sex offenders who are re-entering the community at warrant expiry (end of a sentence). The role of a “circle of support” is to facilitate the reintegration of an ex-offender into the community. By providing support, the program seeks to prevent re-offence and enhance public safety.

Program Content:

The structure, dynamics and experiences of each “circle” develop between the volunteers of the program and the individual offenders. Each case is different. Common features include: intensive supervision, availability of community supports, assisting with the offenders practical living needs, and mediation with the outside community.

Assessment Tools Used:

The offender needs to commit to relating to the ‘circle of support’ for help and advice, and must agree to pursue a predetermined course of treatment initiated by his “circle of support”. This includes acting responsible in the community. The offender’s willingness to follow these requirements are assessed before he is accepted into the program.

Operation:

The project involves volunteers, primarily from the faith community. Professional advisors with various areas of expertise (lawyers, police officers, psychologists and pastors) are also called upon. Contact begins before the offender is released. “Circles” meet periodically as required. A “buddy system” may be established with a member of the circle. A crisis response plan is also developed.

How is Aboriginal Focus Achieved?

No specific Aboriginal focus is incorporated into this program, however, based on the needs of individual offenders, cultural aspects can be included.

Indicators of Effectiveness:

The program is currently developing an evaluation tool.

Contact Information:

The Mennonite Central Committee of Ontario
(416) 596-9341

The Griffin Centre: North York, Ontario

History and Current Status:

Established in 1975, Griffin Centre is an accredited children's mental health center providing quality mental health services to youth and their families. While the centre does not specialize in sexual offending and victimization issues, it is one area they deal with through a generalized youth and family support service.

Philosophy and Purpose:

The centre provides a range of services to help youth and families understand and deal with the stresses of everyday living. The Griffin Center believes in: working with youth, families, schools and others to find solutions to their concerns, helping youth and their families to build on their strength and develop new, useful skills, being sensitive to the cultural and ethnic heritage and traditions of youth and their families, working closely with communities to develop new services for youth and their families, involving youth and their families in planning and decision-making, and helping youth and their families to help themselves.

Program Format:

A range of community and family support services, as well as school support services, are provided. Other programs help youth towards solutions, provide residential support services, promote community support networks, develop resources, and recruit and train volunteers.

Program Content:

Provides telephone support and drop in services to help youth and families learn about center services and other support services available in the community. Consultation and education is provided in the schools. School-based prevention programs, group counseling, family and individual counseling, crisis support and case management are also provided.

Assessment Tool Used:

A wide variety of assessment tools are used depending on individual circumstances.

Operations:

Staff consist of a multi-disciplinary team of child and youth workers, social workers, a psychologist, consulting psychiatrists, and volunteers. The centre receives funding through the Ontario government and also carries out its own fund raising programs.

How is Aboriginal Focus Achieved?

There is no specific focus on Aboriginal issues, however, cultural practices are incorporated into the provision of services as needed.

Contact Information:

Ms. Doreen Cassells, Program Director
(416) 222-1153

Youth Sex Offender Treatment Program, Yukon

History and Current Status of the Program:

In 1993, the Yukon government completed a youth sex offenders needs assessment. This assessment recommended that a higher priority be given to the treatment of youthful sex offenders, and that Yukon establish its own youth sex offender treatment program. The Youth Sex Offender Treatment Program was established in 1994.

Philosophy and Purpose:

This program seeks to enhance community safety by providing supervision, monitoring, treatment, and on-going assessment of youthful sex offenders. Offenders are invited to accept responsibility for their behavior, and they are assisted in developing internal controls to prevent future offending. Community safety is also enhanced by encouraging the community to become more aware of and involved in the prevention of sexual abuse.

Program Format:

The Yukon youth sex offender program is a community-based program that offers a combination of supervision and treatment to youthful offenders. All Yukon youth who have been convicted of sexual offending are targeted for treatment. Adults may also be included if they committed an offense while they were young offenders.

Program Content:

There are five phases of treatment that have been adapted from the Louisville Juvenile Sexual Offenders Counseling Certification Program. The phases are: 1) Therapeutic Engagement - The formation of engaging relationships with the therapists that supports the offenders in assuming responsibility for their actions, 2) Committing Offense - Using their own words, the youth explain the offense(s) that led to their conviction, 3) Trauma Outcome Process - The youth are encouraged to learn about the trauma process and to identifying how these experiences influenced their sexually abusive behavior, 4) Cycle of Sexual Abuse - The youth explore the events, thoughts, feelings and beliefs that lead to their abusive behavior, and identify ways of preventing future offenses from occurring, 5) Relapse Prevention Program - Offenders developing a network of family, friends and significant others who will provide support for the self-management of behavior.

Assessment Tools Used:

An evaluation plan is used to establish treatment goals for each offender. The effects of each component of the treatment program are then assessed against the plan. Recidivism is also used to evaluate program effectiveness.

Operations:

A multi-disciplinary staff team provides services, including: counselors, a program co-facilitator, probation officers, psychologists, psycho-education facilitators, intensive supervision workers, and social workers.

How is Aboriginal Focus Achieved?

At present there are no Aboriginal staff and there is no specific cultural component in the program. However, because a number of the clients are Aboriginal, there has been on-going discussion about how to integrate a cultural component.

Indicators of Effectiveness:

No information is available at this time.

Contact Person:

Ms. Cathy Deacon, Coordinator
Health and Social Services
Government of Yukon
P.O. Box 2703
Whitehorse, Yukon
Y1A-2C6

Sexual Behavior Clinic Royal Ottawa Hospital: Ottawa

History and Current Status of the Program:

Established in 1984, this program provides services to some 200 sexual offenders each year. It is an outpatient treatment program for sex offenders.

Philosophy and Purpose:

To assess and treat sexual deviations

Program Format:

Individualized programs are offered to perpetrators on an outpatient basis. Group therapy is also offered.

Program Content:

This program provides a combination of individual psychotherapy, psychopharmacology, cognitive-behavioral treatment, and group therapy.

Assessment Tools Used:

A range of phallometric and psychological assessments are used.

Operations:

Services are provided on an on-going basis to some 200 patients each year. This is a hospital-based program that provides out-patient services.

How is Aboriginal Focus Achieved?

This is not an Aboriginal-specific program.

Indicators of Effectiveness:

No information is available at this time.

Contact Information:

Dr. John Bradford (Forensic Psychiatrist)
Royal Ottawa Hospital - (613) 722 6521

Waseya Holistic Treatment Program (Waseskun Healing Lodge) Montreal

History and Current Status of the Program:

The Waseskun Healing Lodge is a residential facility located 90 kms. north of Montreal in the town of St-Alphonse-de Rodriguez. The surrounding Lanaudière district is composed of abundant lakes and forests - an ideal natural setting for an Aboriginal Healing Lodge. For the past two years, this has enabled residents of Waseskun Healing Lodge to participate in a variety of activities including: sweat lodge ceremonies, cross-country skiing, snow-shoeing, fishing, and swimming. Prior to 1999, Waseskun had been located in downtown Montreal.

Philosophy and Purpose:

The main goal of the Waseya Program is to break the cycle of intergenerational violence (sexual, emotional and physical abuse), as well as substance abuse, in Aboriginal communities. This is achieved through assisting offenders to come to terms with the unresolved trauma (childhood sexual, physical, mental and emotional abuse) that led to their own abusive behaviors, forgiving themselves and others, and moving on.

The Waseya Program addresses the problems of both the offender and the victim, and sees the family and the community as a critical and inter-connected part of the whole healing process. The program seeks to repair harm done by offences, and to address the underlying causes of offences, including the impact of residential schools, and family and community dysfunction. The program seeks to restore the physical, mental, emotional and spiritual balance in each person's relationships with his world.

The focus is on strict confidentiality, safety of staff and residents, training of staff, and the wellness of all staff and residents. The primary goal is to break the cycle of inter-generational violence and abuse in Aboriginal communities.

Program Format:

The program is delivered within the safe and secure environment of Waseskun Healing Lodge. The treatment format consists of 2 weekly 3 hour sessions.

Program Content:

The Waseya Program utilizes a psycho-educational therapeutic approach that incorporates holistic methods of healing (spiritual, emotional, mental, and physical). It combines Aboriginal teachings and spiritual ceremonies with contemporary Western approaches (such as cognitive-behavioral therapy).

Participants learn subjects ranging from nurturing healthy relationships to the origins of Aboriginal abuse (sexual, emotional and physical).

They also learn to identify and express feelings and emotions in a positive, constructive way. Problematic behaviors such as violence, sexual assault and substance abuse are seen as originating from unhealthy and dysfunctional relationships with primary parental and authority figures in the participants' lives. This has provided them with unstable and sometimes chaotic teaching models, such as boundary violations. Therefore, a major emphasis of the program is to foster a corrective, safe and secure environment in which the participants can learn tools (such as relaxation training, meditation, identifying and expressing emotions, relapse prevention) that are necessary for positive change.

Participants in the Waseya Program also benefit from other activities and programs conducted at the Waseskun Healing Lodge. These include Aboriginal spiritual and cultural teachings.

Assessment Tools Used:

All participants are given initial and final assessments to determine individual progress on targeted issues.

The initial assessment's primary goals are to: determine the nature, extent and seriousness of the aggressive behaviour, evaluate specific behavioral treatment needs of the offender, and make specific recommendations regarding the ideal course of intervention and treatment.

Based on the initial interview (and a review of the offender's correctional file), the following factors are assessed: level of co-operation, level of honesty, degree of aggression and violence, frequency and duration of offences, length, nature and progression of history of aggression, offence characteristics, number of victims in relation to amount of victim access, victim selection characteristics, personal responsibility for offending behavior, precipitating factors to the offences, other abusive or addictive behaviors, internal motivation for treatment, and response to confrontation.

The final assessment's primary goals are to: determine the extent to which the offender has met the objectives of the Waseya Holistic Treatment Program, evaluate specific behavioral treatment needs of the offender, and make specific recommendations regarding the ideal course of intervention and treatment. Based on the final interview, as well as individual progress notes, case work records, and consultation with the Waseskun Healing Lodge Clinical Management Team, the following factors are assessed: attendance, level of participation in programs, level of motivation, degree of comprehension, level of insight into participant's own sexual deviancy, level of integration of holistic principles, level of progress on individual issues, and level of risk for re-offending.

Operations:

The Waseya Program has been in operation since March, 2000. It was developed as an alternative approach to existing Correctional Services of Canada programs for the treatment of sex offenders and violent offenders. There is a strong emphasis on Aboriginal holistic healing. During its first year of operation, the Waseya Program has treated 25 Offenders. This number is expected to increase to 45 per year in the next few years.

How Aboriginal Focus is Achieved:

The legacy of intergenerational abuse in Aboriginal communities (and its causes) is a major theme of the Waseya Groups. In addition, participants are given Aboriginal cultural and spiritual teachings from Elders and helpers. Smudging ceremonies, sweat lodge ceremonies, drumming and singing, sacred fire ceremonies, feasts and pipe ceremonies are examples of some of the regular Aboriginal activities that are available to all residents of Waseskun Healing Lodge.

Indicators Of Effectiveness:

Given that the Waseya Program has been in existence for only a year, no long-term follow-up has been conducted. However, a recent independent evaluation of the program has determined that the initial goals, in terms of the integrity and delivery of the program, have been met. In addition, feedback in the form of Participant Evaluation Forms has consistently indicated the positive impact the Program has had on participants. It should be noted that participants are encouraged to give their input to facilitators in order to ensure that their needs are being met.

Contact information:

Peter Kelly
Waseya Program Coordinator.
(450) 883-2034

Northstar Community Support Initiative, Abbotsford

History and Current Status of the Program:

In the Fall of 2000, a proposal was submitted to the Correctional Service of Canada, National Headquarters, requesting funding to bring two community people to the Regional Health Centre to work with two sex offenders who were close to their statutory release dates. The two offenders had just completed the Northstar Sex Offender Treatment Program. Funds to proceed with this initiative were granted.

Philosophy and Purpose:

The philosophy behind this program was to link two sex offenders with two trusted community representatives who could provide them with advice and assistance in their own communities after release. The purpose of the program was to prepare the community representatives and the offenders to make use of this resource at the community level.

Program Format:

Two support workers from the home communities of two Aboriginal sex offenders were invited to spend a week with the institutional Treatment Team in preparation for providing support to the offenders after release.

Program Content:

On the first day, the two community representative learned about Sections 81 and 84 of the Corrections and Conditional Release Act. These provisions allow communities to assume responsibility for Aboriginal offenders at any time during their sentences. The representatives then watched a presentation that provided an overview of the incarceration experience, including: the time when the offender arrives, the intake assessment, the daily routines of incarceration, and preparations for release.

For the remainder of the day, the two community representatives informed the Treatment Team about their respective communities, including: the resources that would be available to the offenders when they returned, the family histories of the offenders, their problems in the communities, and the type of reception they could expect.

The second day began with a presentation on the theory of sex offending and sex offenders, including: characteristics that are typically associated with sex offenders, their patterns of thinking and feeling, their behavioral and relationship histories, and the role of substances in their lives and in the choices they make. The two offenders were present and personalized the information to their crime cycles.

Sexual thinking and sexual fantasies were then discussed. The offenders disclosed their deviant, violent, and victimizing fantasies. Other elements of their respective crime cycles were also shared to assist the

community representatives to help them in recognizing coping strategies and warning signs of relapse. Offenders were encouraged to share their thoughts, feelings, and behaviors.

The importance of offenders monitoring their sexual thinking and fantasies through the use of daily logs was introduced. This promotes self-awareness of thinking patterns, fantasizing, and high risk behaviors. The logbooks are crucial for learning to practice alternate thinking and the use of coping strategies. Here, the support person can be instrumental in helping the offender when he is having trouble coping. The two offenders described their risk factors, shared their high risk behaviors, and shared their relapse prevention plans.

The Institutional Elder then talked about other community supports and how to involve community elders and the Chief and Band Council in the reintegration of offenders. The offenders were encouraged to be honest about what was going on for them, and to ask for help, especially when feeling “down”. It was also stressed that all of the people in the community who are involved with the offender must be aware of the key issues and must monitor contact with him.

On the third day, a detailed description of each of the components of the Northstar Sex Offender Treatment Program was provided. This focused on disclosure, crime cycle, and relapse prevention. Other program components were presented to explain to the community representatives the other skills that the offenders had learned to address their excesses and deficits. Again, the program components were personalized. The offenders spoke of their own experiences, difficulties, successes, and their feelings going through the program modules.

Offenders present their high risk factors and their coping strategies (relapse prevention plans) to the treatment staff and the community support people. Quite a bit of discussion ensues. The community support people make a valuable contribution by discussing their own communities and the supports and resources that are available.

The Institutional Elder conducted a sweatlodge ceremony. This ceremony added a very important and meaningful component to the week. Sharing the spiritual experience of a sweatlodge ceremony with the offenders highlighted a belief that continuing with their spiritual practices was an essential coping strategy for both offenders.

The focus of the fourth day was on parole. The role and responsibilities of a parole officer were explained in detail. The Parole Officer’s job was to make sure that the parolee abided by the conditions of his release, followed the community strategy, and succeeded. The offenders shared their high risk factors and their coping strategies. The relationship between the Parole Officer and the community was discussed.

An Elder Assisted National Parole Board Detention Hearing was held on the final day. The community representative was able to talk about the offender’s community and the supports that were available. The offender expressed remorse for the harm he had done and for the pain he had caused. He expressed his desire to reconcile with his victims and to apologize for his wrongdoing. This offender was granted Statutory Release with residency. A week later he left the Regional Health Centre for Tsow Tun Le Lum, a First Nations Treatment Centre on Vancouver Island, to participate in their substance abuse

program. Before his warrant expires, he will also attend the Tsow Tun Le Lum trauma program for survivors of residential schools.

Operations:

Discussions were held with the two offenders and, as both offenders are from First Nations communities, with the Chief and Band Manager from each of the communities. In this way, an appropriate representative was selected to be a support worker for each of the men upon release. Each of these support individuals was then provided with a one week on-site program involving treatment staff and the offenders themselves.

Assessment Tools Used:

No information available at this time.

How Is Aboriginal Focus Achieved:

Through the involvement of Aboriginal community representatives, traditional ceremonies and teachings, and the involvement of elders.

Indications Of Effectiveness:

This is an experimental program involving only two offenders. Nonetheless, everyone involved felt that something important and significant had transpired as a result of the program. An evaluation of this initiative will occur after the offenders have returned to their communities.

Contact Information:

Jim White
(604) 870-7735.

Notes

1. Another very useful source of general sex offender treatment program information is: Marshall, William, Fernandez, Yolanda, Hudson, Stephen, and Ward, Tony (eds.) (1998). Sourcebook of treatment programs for sexual offenders. New York: Plenum Press.

Appendix B

Crime and Sexual Offending In Canada

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Crime and Sexual Offending in Canada

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Appendix B

Crime and Sexual Offending In Canada

This appendix provides an overview of crime and sexual offending trends in Canada generally. The analysis provides a context for understanding the trends in Aboriginal offending which are discussed throughout the body of the report.

Measuring Crime

Generally, there are two methods for estimating the incidence of crime — official crime statistics and victimization surveys:

1. **Official Crime Statistics.** This method relies on the records maintained by the police, the courts and the correctional authorities. These statistics are routinely collected and published by the Canadian Centre for Justice Statistics, an agency of Statistics Canada, and by other criminal justice agencies. These official statistics reflect only the offenses and offenders that become known to the authorities. As a result, these statistics may be misleading, since many crimes, particularly sexual offenses, often go unreported. In addition, official statistics partly reflect the discretionary decisions made by criminal justice system officials. For example, enforcement priorities of the police, prosecution policies of the Crown, and sentencing practices of the courts will all influence official crime statistics.
2. **Victimization Surveys.** A second method of estimating the incidence of crime involves victimization surveys. These surveys poll citizens to determine if they have been victimized. The findings are generally a truer reflection of actual crime patterns than official crime statistics, since victimization reports do not rely on offenses being reported to the police, nor do they depend on any subsequent decisions made by criminal justice system officials. However, these surveys do rely on respondents' ability to accurately recall and report their victimization experiences.

As both these methods provide important complementary “pictures” of the incidence of crime in Canada, they are used throughout the discussion that follows and in the main body of the report.

Crime In Canada

According to currently available official statistics, there has been a significant and consistent decline in crime rates in Canada over the past number of years. In particular, Statistics Canada (1999a) has recently reported that:

1. The police reported crime rate decreased in 1998 for the 7th consecutive year;
2. The drop in 1998 was 4%. Over seven years the drop has been 22%;
3. The crime rate in 1998 was the lowest since 1979;

4. The rate of violent crime declined in 1998 for the sixth consecutive year;
5. Violent crime was down by 2% in 1998;
6. The property crime rate was down by 7% in 1998, continuing a general decline that started in 1991; and
7. The use of firearms and other weapons, often linked to violent crime, has also decreased every year since 1994.

According to Statistics Canada and other sources, levels of youth crime also appear to be decreasing:

1. The youth crime rate declined 4% in 1998. The rate has generally been decreasing since 1991. Violent youth offences were also down for the third straight year (Statistics Canada 1999a).
2. The rate of youth court cases per 10,000 youths declined by 9% between 1992-93 and 1997-98 (Statistics Canada 1999c);
3. Following an extensive review of youth crime statistics, Schissel (1997: 99) concludes; “there is no substance to the contention that youths are progressively becoming more criminal and more dangerous.”
4. The rate of decline for property offences between 1992-93 and 1997-98 was 25% (Statistics Canada 1999c); and
5. While the rates of violence have declined, it has also been determined that there has been no indication that the “quality” of youth violence is becoming more serious (Doob and Spratt 1998).

Similar findings have also been widely reported elsewhere (e.g., Bala 2000; Doob et. al. 1995; Carrington 1999).

As alluded to earlier, there are a number of problems with police reported crime statistics. In particular, there is significant under reporting of crimes to the police. Generally, only 1 in 3 or 1 in 4 crimes is reported (Griffiths and Verdun-Jones 1994) and, in some instances, the rate of reporting is much less (Doob et. al. 1995). For example, the National Crime Prevention Centre (2001) estimates that 68% of personal assaults are not reported to the police. In addition, the crimes reported by the police reflect, at least in part, the enforcement practices of the police. Therefore, changes in official crime statistics may reflect changes in crime levels, changes in enforcement or reporting practices, or a combination of these factors.

Despite the weaknesses of official crime statistics, it is likely that the reported declines in Canadian crime rates reflect actual decreases in the levels of crime. There are at least two reasons for this.

1. Firstly, criminologists agree that “homicides are unlikely to go either unreported or misinterpreted in any significant way” (Doob et al. 1995: 21). For this reason, there is particular interest in *monitor-*

ing the number of homicides each year. These data are important in and of themselves, since they indicate the incidence of the most serious of all crimes, but they are also regarded as an important barometer of overall crime trends, since homicide data are much less likely to be influenced by the vagaries of reporting and enforcement practices than statistics dealing with less serious crimes. In addition, homicide rates are an important indicator of family violence, since fully 40% of the women murdered each year are killed by a male with whom they have had an intimate relationship (National Crime Prevention Centre 2001). It is significant, therefore, that data respecting the incidence of homicide in Canada confirm the trends noted above; homicide rates have generally been falling since the mid-1970s and, in 1998, the rate was the lowest in 30 years (Statistics Canada 1999a). The youth homicide rate has also been decreasing since 1974.

2. Secondly, further confirmation that crime levels are decreasing in Canada has come from the results of victimization surveys. While the National Crime Prevention Centre (2001) estimates that 25% of adult Canadians are victimized by crime each year, recent Statistics Canada reports (1999b; 2000c) confirm that victimization rates are not increasing and, in fact, may be decreasing in some areas.

Taken together, the evidence is persuasive that there has been a significant reduction in the overall levels of crime in Canada. Moreover, this downward trend appears to span many years and, with few exceptions, it is evident in all parts of the country and across all crime categories.

It is noteworthy that despite the decline in officially recorded crime, as well as the encouraging findings from victimization surveys, fear of crime continues to be widespread in Canada. In a 1997 survey, for example, 75% of those polled thought crime in their communities had increased over previous years (National Crime Prevention Centre 2001). While other findings suggest Canadians are beginning to feel somewhat more secure (Statistics Canada 2000c), studies consistently point out that public perceptions greatly exaggerate the true extent of the crime problem (Roberts and Stalans 1997).

Sexual Offending In Canada

The number of sexual offences reported to the authorities in Canada increased rapidly beginning in the early 1980s and peaked in 1993 at 135 incidents per 100,000 population (Statistics Canada 1999f). While the beginning of this period coincided with the significant changes in Canadian laws that were discussed earlier, it is unlikely these changes alone were responsible for the increased reporting. Nor is it likely that the increased reporting was due to an increase in sexual violence. Rather, in Canada, as in many other countries, reporting began to increase in the early 1980s because of heightened public awareness, reduced stigma associated with being a victim, increased supports for victims, and a growing determination on the part of the justice system to treat family violence and sexual assault as serious crimes.

The remarkable increases in reported incidents of sexual offending during the 1980s was followed by an equally remarkable decrease beginning in the early 1990s. This pattern is consistent with the decrease in overall crime rates in Canada during the same period. For example, Dell et. al. (1998) report that sexual assaults and other sexual offences appearing in Canadian courts decreased from 10 per

10,000 in 1994-95 to 8 per 10,000 in 1996-97. Similarly, between 1998 and 1999, a further drop of 7.3% was recorded by Statistics Canada (2000a).

Recent declines in sexual assault rates reflect the continuation of a downward trend that has spanned the last six years. According to Statistics Canada (2000b, p. 6-7):

After reaching a peak in 1993, the rate of total sexual assaults has declined for a sixth consecutive year, including 7% drops in both 1998 and 1999. All three levels of sexual assault were down compared to the previous year: aggravated sexual assault dropped by 4%, sexual assault with a weapon declined 14%, and sexual assaults (level 1) decreased 7% . . . Rates of sexual assault decreased in 18 of the 24 CMA's (census metropolitan areas).

Table B.1 shows the number and rates of sexual offences reported to the police in Canada from 1995 to 1999. The data indicate that the reported rate of sexual assault has decreased from 96 to 78 offences per 100,000 population, a decline of nearly 20%, while the actual number of incidents declined from 28,000 to less than 24,000. With regard to "other sexual offences," however, no similar pattern is evident. Throughout the five year period, the rate was between 11 and 12 offences per 100,000 population. Depending on the year in question, there are between 7 and 8 reported sexual assaults for every offence in the "other" category.

Table B.1
Sexual Offending in Canada (1995-1999)

	Sexual Assaults		Other Sexual Offences	
	Incidents	Rate	Incidents	Rate
1995	28,234	96	3,494	12
1996	27,026	91	3,343	11
1997	27,013	90	3,650	12
1998	25,553	84	3,445	11
1999	23,872	78	3,301	11

Source: Canadian Centre for Justice Statistics (2000a). Canadian Crime Statistics. Ottawa: Statistics Canada.

Table B.2 shows the number of sexual offences reported to the police by jurisdiction. The number of adults and youth charged, as well as a breakdown of males and females charged, is also provided. This analysis indicates that the offence rate reported to the police varied from a low of 47 per 100,000 population in Quebec, to a high of 754 per 100,000 population in Nunavut. There is a sixteen fold difference in reported offense rates between the highest and lowest jurisdictions. These differences likely reflect patterns of incidence, as well as differential reporting and enforcement practices. Overall, however, sexual assaults represent only about 1% of the crimes reported to the police.

Table B.2 also shows that there are five adults charged with a sexual assault for every young offender charged. At the same time the level of youth offending is not insignificant. In 1999, 1,423 youth were charged with a sexual offence.

In 1999, Table B.2 shows that 98% of those charged with sexual assaults were male, while only 2% were female. There were 43 males charged with a sexual offence for every female charged (although the ratio was 48:1 for adults and 27:1 for young offenders). Including both adults and young offenders, the number of females charged in 1999 was only 204, while the number of males charged was 8,734. Interestingly, males make up an even larger proportion of those charged with sexual assaults (98%) than of those charged with violent crimes generally (85%)(Statistics Canada 1999e);

Table B.2
Sexual Assaults in Canada (1999)

	Offences		Persons Charged			
	#	Rate	Adults		Youth	
			Male	Female	Male	Female
Newfoundland	644	119	213	3	45	2
PEI	105	76	30	0	6	0
Nova Scotia	844	90	249	6	43	2
New Brunswick	775	103	205	4	43	3
Quebec	3,434	47	983	25	181	8
Ontario	8,270	72	2,580	65	534	11
Manitoba	1,307	114	480	7	81	5
Saskatchewan	1,375	134	373	-	83	-
Alberta	2,715	92	736	16	149	5
British Columbia	3,907	97	1,301	20	189	10
Yukon	90	294	47	2	4	1
NWT	202	486	82	1	10	-
Nunavut	204	754	82	5	5	-
CANADA	23,872	78	7,361	154	1,373	50
Total Criminal Code	2.36M	7,733	310,021	66,991	77,142	22,604

Source: Canadian Centre for Justice Statistics (2000a). Canadian Crime Statistics. Ottawa: Statistics Canada.

Table B.3 shows the number and rate of sexual assaults committed by young offenders. In comparison with adults, there are comparatively fewer sexual offences committed by young offenders (78 per 100,000 vs. 58 per 100,000 in 1999). Offending trends over the past number of years have been similar for both youth and adults. As with adult trends, the youth rate also increased during the 1980s, peaked in 1993 at 91 per 100,000, and has been declining since that time. In 1999, the rate declined to 58 per 100,000, a decrease of 36% over the rate in 1993.

Table B.3
Youth Charged with Sexual Assault in Canada (1989-1999)

	# of Incidents	Rate	% Change Rate
1989	1,478	66	18.7
1990	1,609	71	8.3
1991	1,906	84	17.5
1992	2,074	90	7.3
1993	2,132	91	1.7
1994	1,896	80	-12.1
1995	1,586	66	-17.3
1996	1,581	65	-1.6
1997	1,494	61	-6.4
1998	1,440	59	-4.0
1999	1,423	58	-1.2

Source: Canadian Centre for Justice Statistics (2000a). Canadian Crime Statistics. Ottawa: Statistics Canada.

Other information about sexual offences available from Statistics Canada data (2000a) include the following:¹

- Of the 9,400 victims of sexual assault in 1999, 86% were female and 14% were male;
- 24% of sexual assault victims are assaulted by a family member, 49% by an acquaintance, and 22% by a stranger. In 5% of cases, the offender is unknown. There is a marked difference for male and female victims. Female victims are more likely to be assaulted by a stranger (23% vs. 14%), while male victims are more likely to be assaulted by family members or acquaintances;
- The vast majority of incidents of sexual assault (97%) are classified by the police as Level 1, the type involving the least physical injury to the victim. Injuries associated with sexual assaults are as follows: no injury - 37.2%, minor injury - 50.9%, major injury - 5.0%, and unknown injury - 6.9%;
- Sex offenders are somewhat older than offenders who commit other violent crimes (with a median age of 32 years vs. 29 years) (Statistics Canada 1999e);
- The victims of sexual assault span the full age spectrum, but some 60% are children or youth under 18 (Statistics Canada 1999f). There are significant differences in the ages of male and female victims. Fully half the male victims are under 12, whereas only 20% of the female victims are under 12. However, there are twice as many female victims over 18 (47% vs. 24%). In contrast to sex offence victims, only 24% of victims of other violent crimes are children or youth under 18;

- In comparison with other types of charges, very few sex offenses are cleared by charge. With regard to sexual assaults, data from the adult criminal courts in 1998-99 (Statistics Canada 1999e) indicate 48% of charges were stayed or withdrawn, while 50% of sexual abuse charges were stayed or withdrawn;
- Sexual assaults represent 6.8% of the violent crimes committed by youth and 1.4% of all crimes committed by youth. For adults, the corresponding figures are similar, 8.2% of violent offences and 1% of all crimes.

As has been discussed, official statistics regarding crime have significant limitations because many crimes are never reported to the police. This is especially true of sexual assaults and other sexual offences. For example, the National Crime Prevention Centre (2001) estimates that 90% of sexual assaults are not reported to the police.

Statistics Canada, through the General Social Surveys conducted in 1988, 1993 and 1999, has tracked victimization rates in Canada for a number of crimes, including sexual assault. As indicated in Table B.4, the survey conducted in 1999 estimates there are some 502,000 sexual assaults committed in Canada each year (Statistics Canada 2000c). This is a rate of 21 incidents per 100,000 population. There are wide variations in victimization rates, with the low rate being reported in Quebec (14 incidents per 100,000 persons over 15 years of age) and the high rate being reported in British Columbia (40 incidents per 100,000). Separate rates are not available for the territories and a number of smaller provinces. Importantly, Statistics Canada estimates that 78% of sexual assaults are not reported to the police, the highest under reporting rate for any crime category tracked in the survey.²

The Statistics Canada victimization survey did not estimate the number of other sexual offences, offences that mostly involve children. However, if the ration of reported to unreported offences is similar for both types of offences, and if the ratio sexual assaults to other sexual offences is 7:1 (see Table B.1), it may be estimated that some 70,000 other sexual offences occur each year. If the proportion of other offences reported to the authorities is lower than the reporting rate for assaults, and this seems likely. The number could be much higher. Nonetheless, a conservative estimate would put the total number of sexual offences in Canada each year at about 600,000.

Despite the large number of incidents and the high under reporting rate, Statistics Canada found that victimization rates for sexual assault have not changed significantly since the 1993 survey was conducted. However, since the number of cases reported to the police decreased significantly over this same period, it may be that fewer cases are being reported to the authorities. Indeed, given that only 24,000 cases of sexual assault were reported to the police in 1999 (see Table B.1), it may be that the under reporting rate for sexual assaults could be as high as 95% (24,000 reported cases out of an estimated 502,000 incidents).

Table B.4
Rates of Victimization for Sexual Assaults in Canada (1999)

	# of Incidents	Rate per 1,000 Over Age 15
Newfoundland	-	-
PEI	-	-
Nova Scotia	-	-
New Brunswick	-	-
Quebec	83,000	14
Ontario	179,000	20
Manitoba	-	-
Saskatchewan	-	-
Alberta	44,000	19
British Columbia	131,000	40
CANADA	502,000	21

Source: Canadian Centre for Justice Statistics (2000a). Canadian Crime Statistics. Ottawa: Statistics Canada.

- amount too small to be expressed.

In addition to under reporting, Statistics Canada notes that many offences are reported only after long delays. In 1997, for example, 7% of sexual offences reported to the police were for offences that occurred before 1993. In the vast majority of these instances (88%), the victims were under the age of 18 at the time the offences were committed (1999f).

Victimization levels for family violence are much higher than victimization levels for sexual assault. Statistics Canada (2000d) estimates that 8% of women and 7% of men who were married or in a common-law relationship experienced some type of violence by a partner during the previous five years. Only 1 in 8 incidents of family violence involved a sexual assault, and the ratio of family violence incidents involving women and men was 7 to 1. Women were also more likely than men to be repeatedly victimized, and to suffer serious injuries. During the five year period, 37% of cases involving spousal violence for women were reported to the police, whereas 15% of spousal violence involving male victims were reported. Some half million children heard or witnessed a parent being assaulted during the five year period.

The Sentencing Of Sex Offenders

In the previous sections, the incidence of crime and sexual offending have been discussed. The analysis has reviewed official crime statistics as well as findings from victimization surveys. Another way of examining the impact of sex offending is to look at how sexual offenders are processed through the criminal justice system. In this regard, it is particularly instructive to examine sentencing and imprisonment practices.

Statistics Canada information provides a number of important insights into the sentencing of sex offenders in Canada:

- Sexual assault and sexual abuse convictions result in prison sentences in nearly 60% of cases involving adult perpetrators. In contrast, adult violent offenders are sentenced to periods of imprisonment in only 38% of cases. Of those sex offenders not sentenced to prison, approximately 75% receive probation, while the remainder receive some other disposition (Statistics Canada 1999e; 1999f);
- Sentencing patterns are quite different for young offenders. As with sentences for other violent crimes, about two-thirds of young offenders are sentenced to probation, while about one-third are sentenced to custody (Statistics Canada 1999f);
- Of those offenders sentenced to prison, 8.5% receive less than one month, 34.2% receive one to six months, 18.7% receive six to twelve months, 18.6% receive one to two years, and 19.9% receive two years or more (Statistics Canada 1999e). Some 14% of violent offenders receive prison terms of one year or more (Statistics Canada 1999f), compared to 38% of those convicted of sex offences;
- Those convicted of sexual assault are generally given prison terms at about the same rate as those convicted of sexual abuse, but they serve much longer terms; the mean sentence length for those receiving prison was 527 days for sexual assault, and 362 days for sexual abuse;
- A snapshot taken in 1996 (Statistics Canada 1999f) indicates there were 1,471 sex offenders in provincial and territorial correctional institutions, constituting 6% of the total count, and 1,872 in federal correctional institutions constituting 14% of the count. Overall, sex offenders made up 9% of all inmates on register in Canadian correctional institutions;
- Almost half of federal inmates over 55 years of age are sex offenders (Statistics Canada 1999f);

While sex offenders make up a relatively small proportion of the cases processed through the justice system, because they are dealt with more harshly and often receive long prison sentences, they make up a significant proportion of those held in long-term custodial facilities. A closer examination of the sex offender population under federal supervision will make this more clear.

Sex Offenders Under Federal Supervision

In this section, the experience of the Correctional Service of Canada (CSC) in supervising sex offenders is reviewed. The CSC provides custody services to offenders throughout Canada who are sentenced to incarceration for periods of two years or more. In addition, CSC provides community supervision to offenders who have been granted parole or who are on mandatory supervision following a statutory release from a correctional institution.³ Because many sex offenders receive jail terms, and some receive long jail terms, the experience of CSC provides an important perspective on the criminal justice system response to sexual offending in Canada. The CSC is charged with the responsibility of dealing with the most serious offenders.

Beginning in the 1980s, there was a marked increase in the number of incarcerated sex offenders in jurisdictions throughout North America. In U.S. state jurisdictions, for example, the number of incarcerated sex offenders increased from 25,000 in 1983 to 58,000 in 1988, an increase of 130%. In Canada, 7.1% of federal admissions in 1979 were sex offenders, but between 1985 and 1989, the average rose to 11.4%. Whereas there were 871 sex offenders incarcerated in 1984, by 1989, the number had nearly doubled to 1,574. During this same period, the total federal inmate population increased by only 3.5% (Gordon and Porporino 1990).

A 1991 census of sex offenders in the custody of the Correctional Service of Canada (Porporino and Motiuk 1991) found that 14.9% of those in federal custody were sex offenders. A further breakdown indicated that 18.9% of those in custody, and 9.9% of those on community supervision orders, were sex offenders. According to this study, there were 545 sex offender admissions in 1986-87, representing 8.9% of all admissions. By 1990-91, 692 admissions were recorded, representing 10.7% of all admissions during that year. Between 1986-87 and 1990-91, there was an increase of 27% in the number of sex offender admissions, and a 20% increase in the admission rate.

At the end of 1995, Blanchette (1996) estimated there were 4,500 sex offenders under federal jurisdiction in Canada, representing some 20% of the total census. She further estimated that sex offenders made up about 24% of those incarcerated in federal institutions, and about 14% of those on conditional releases. An increase of some 50% in the number of sex offender admissions was reported in the five years between 1990 and 1995.

In 1997, Serin et. al. (1997), estimated that 25% of incarcerated federal inmates were sex offenders. A year later, Motiuk and Belcourt (1998) conducted a census of those under federal supervision as at December 31, 1997. In this census, the number of sex offenders was estimated to be some 4,591 offenders, or 21% of those under federal jurisdiction. Of these, 3,250 were incarcerated, representing 25.2% of the inmates, while 1,341, or 14.4%, were on community release.

Between 1994 and 1997, Motiuk and Belcourt (1998) reported there was an increase of 4.4% in the number of sex offenders under federal supervision. A 2.5% increase was recorded in the number of incarcerated offenders, while there was a 9.4% increase in those under community supervision.

In 1998, Boe et. al. (1998) undertook a study to determine the reasons for the unusual growth in the number of incarcerated federal offenders. Between 1989/90 and 1994/95, there had been a 22% increase

in federal counts, about twice the historic growth rate, as well as a 12% increase in provincial counts. The study determined that more offenders were receiving custody sentences and that their sentences were getting longer. The trend was attributed to a number of factors: a significant growth in offenders convicted of sexual assaults and other assaults, an increase in violent offences, fewer conditional releases being granted to incarcerated inmates, and more revocations involving the re-incarceration of those on community supervision. An increase of 11% in aggregate sentence length was reported.

Thus, the number of sex offenders in the federal correctional system has increased dramatically over the past 20 years. Between 1979 and 1997, the evidence indicates there has been nearly a 400% increase in the proportion of sex offenders in federal correctional institutions (from 7.1% to 25%). Whereas there were less than 1000 sex offenders incarcerated in federal institutions in the late 1970s, the most recent data indicates there are now over 4,500 such offenders.

Records of CSC do not accurately record prior convictions. Therefore, in all of the studies reported here, some offenders with previous histories of sexual offences would have been missed. Had these offenders been included in the counts, the total numbers and proportions who had a history of sexual offences would have been significantly higher.

The patterns that emerge from these data reflect the trends in the reporting of sexual offences discussed earlier in this chapter. As more offences were reported to the police throughout the 1980s and early 1990s, more perpetrators were charged and convicted. Many of these offenders were sentenced to prison, often for long periods. As a result, the numbers and proportions of sex offenders in the federal correctional system increased dramatically. Initially, only a small number of sex offenders were on community supervision, but the numbers and proportions have been increasing as incarcerated sex offenders have become eligible for parole or mandatory supervision.

The reductions in the number of sexual offences reported to the police, which began in 1993, have not yet fully impacted the populations under federal supervision, but these effects can be expected to be felt in future years, especially if the number of sex offender convictions continues to decline.

Selected Characteristics Of Sex Offenders In Federal Custody

A number of studies conducted by the Correctional Service of Canada and others have documented the characteristics of sex offenders under federal supervision, as well as the particulars of their criminal histories and sexual offences. On the basis of these studies, it is possible to construct a general profile of these offenders:

1. Age. On average, sex offenders admitted to federal correctional facilities are 34.6 years of age (Motiuk and Porporino 1993);
2. Gender. In 1998, Motiuk and Belcourt reported that 99.6% of sex offenders under federal supervision were male, while only .4% (15 offenders) were female. According to the Correctional Service of Canada (1996), in July 95 there were 19 females sex offenders, comprising 3% of the 622 female offenders under federal supervision. A check of criminal histories indicates that females may account for a larger number of sex offences than their representation among federal offenders would indicate.

For a variety of reasons, the prosecution of female sex offenders is quite rare;

3. **Sentence Length.** Serin et. al (1997) found that sex offenders serving prison sentences in the federal system had average sentence lengths of four years and three months. Blanchette (1996) has reported similar results. Motiuk and Porporino (1993) found that 50% of sex offenders in their study had sentences of less than four years;
4. **Security Classification.** Motiuk and Belcourt (1998) found that 526 (19%) sex offenders in federal institutions were in maximum security institutions, 1897 (78%) were in medium security institutions, and 348 (13%) were in minimum security institutions. While 25.2% of institutionalized offenders were sex offenders, only 14.4% of those on community supervision were sex offenders. Of these, half had been statutorily released at the expiration of their sentence. Similarly, Porporino and Motiuk (1991) found that two-thirds of the institutionalized sex offenders in their census had passed their parole eligibility dates. These findings indicate that many sex offenders do not apply for parole, presumably because they are not optimistic about their prospects; others may have applied and been denied;
5. **Characteristics Of The Offence.** Serin et. al (1997) reviewed the admissions of sex offenders during 1995. They found that 50% of sex offenders had been convicted of sexual assault, 8.4% were incest offenders, 14.9% were child molesters, and 5.3% had been convicted of other sexual offences. Similar results were reported by Blanchette (1996). Motiuk and Porporino (1993), found that 15% of victims had been treated in hospital, and one-third of offences involved penetration or attempted penetration. In three-quarters of all sex offender cases, there was only one victim involved in the incident. Over 90% of offenders reported they had committed their offences to achieve sexual gratification;
6. **Offence Circumstances.** Two-thirds of offenders reported being under the influence of alcohol at the time of the offence, while one-third were under the influence of drugs. Two-thirds admitted having an alcohol problem, and two-fifths admitted to having a drug problem. Half said they had planned their assault in advance (Motiuk and Porporino 1993);
7. **Victim Characteristics.** Motiuk and Porporino (1993) found that 90% of the victims of sexual offenders in federal custody were female, one-third were 12 years old or younger, and two-thirds were 18 years old or younger;
8. **Victim-Offender Relationship.** Motiuk and Porporino (1993) found that two-thirds of child victims were biological or step children of their abusers, while only one in ten perpetrators victimized a stranger. Older children and young adults, especially young women, were more likely to be victimized by strangers, while younger victims were more likely to be abused by someone they knew. Abuse of older children and young adults also involves more violence;
9. **Previous History Of Sexual Offences.** A census of sex offenders conducted by Porporino and Motiuk (1991) found that most federal sex offenders are serving time for their first sexual offence. Only one quarter of the sex offenders had a previous record for a sexual offence. Motiuk and Porporino (1993) found similar results in 1993. 69% of the sex offenders in their study were serving their first

sentence for a sex crime, while less than one in three had a previous conviction for a sex crime. However, this study also reported that 20% of sex offenders admitted to previous sex offences for which they had not been convicted. In 38% of the cases, a pattern of increasing offence severity was evident over time. Interestingly, the authors found that, as a group, sex offenders had relatively less exposure to the criminal justice system than other federal offenders. However, over 40% of sex offenders did have a juvenile record;

10. History Of Family Violence. Robinson and Taylor (1995) looked at the files of offenders in federal penitentiaries. One-third had perpetrated family violence. Of these, 56% had been abusive to more than one family member. Of the sex offenders in a marital relationship, 29% had been abusive towards a female partner, and one in five had charges laid as a result. 13.3% of those with children reported being abusive towards them. Half those in the sample had themselves been victims of or witnesses to abuse in the home. Similarly, Motiuk and Porporino (1993) found that one third of sex offenders had been abused by their parents or care givers before the age of 16. In half the cases, the parent or primary care giver was reported to have had a drug or alcohol problem. In 75% of the sex abuse cases, the abuser was a male, and in one quarter of the cases, the abuser was in a position of authority. Robinson and Taylor (1995), as well as others (e.g., Alksnis and Taylor n.d.), have found a cycle of violence; the childhood experience of violence, including experiencing or witnessing abuse, was predictive of later perpetration of violence against family members. However, studies have failed to find a strong or consistent correlation between sexual victimization and perpetration of sexual crimes;
11. Geographic Distribution. Robinson and Taylor (1995) found that the highest numbers of sex offenders were incarcerated in the Prairie region institutions of the Correctional Service of Canada. Current data for the various regions of CSC confirm this finding, with over 40% of all sex offender admissions occurring in the Prairie Region (see Table B.5);

Table B.5
Sexual Assault Admission to Federal Correctional Facilities by Region (1995-1998)

		# of Admissions	% of Yearly Total
Atlantic	1995-96	53	
	1996-97	47	
	1997-98	44	
	Average	48	9.2%
Quebec	1995-96	91	
	1996-97	103	
	1997-98	86	
	Average	93	17.8%
Ontario	1995-96	112	
	1996-97	100	
	1997-98	112	
	Average	108	20.7%
Prairie	1995-96	218	
	1996-97	256	
	1997-98	199	
	Average	224	42.8%
Pacific	1995-96	50	
	1996-97	49	
	1997-98	50	
	Average	50	9.6%
Total	1995-96	524	
	1996-97	555	
	1997-98	491	
	Average	523	100%

Source: Statistics Canada (1999). Adult correctional services in Canada, 1997-98. Ottawa: Statistics Canada.

12. Participation In Sex Offender Treatment. At the time of admission, one in ten sex offenders admitted to federal correctional facilities reported having previously received sex offender treatment. A census of federal sex offenders conducted in 1991, found that one-quarter of them had completed or were currently involved in treatment (Motiuk and Porporino 1993); and

13. Other Characteristics. In common with many other types of offenders, sex offenders often come from home environments that are characterized by instability. Many offenders are separated from their families as children because of family breakdown. This may involve placements in foster care, training schools or other institutions. Parents and offenders also often have low educational attainment, low incomes and unstable employment patterns (Motiuk and Porporino 1993).

Conclusion

A number of important observations, implications and conclusions can be drawn from the findings and analysis presented in this appendix.

- Since the 1980s, there has been a steady stream of new legislation and programs that reflect societies growing concerns with sexual offending;
- Despite heightened concern, however there has been a marked decrease in crime for most of the past decade, and this is also true of reported sexual offences;
- Sexual assault is by far the most common sexual offence. There are about eight cases of sexual assault for every case involving the molestation of a child;
- Whether measured by the number of incidents reported to the police, or by victimization data, there are vast differences in patterns of sexual offending in various parts of the country. The highest rates are consistently in the North and the West;
- Sexual offences reported to the police are the “tip of the iceberg.” About 1% of all reported crimes are sexual offences, but this 1% amounts to some 27,000 reported incidents each year. More importantly, despite intensified public education and enforcement efforts, as many as 90% of sexual offences go unreported. And when incidents are reported, charges are stayed or withdrawn in half these cases Thankfully, very few of these incidents involve violence or physical injury;
- The vast majority of the perpetrators are men, while the vast majority of victims are women and children who know their assailants;
- Throughout the 1990’s, increased numbers of sexual offenders have been convicted and sentenced to often lengthy periods of incarceration. Despite the stiff penalties and the reluctance of correctional authorities to parole sex offenders, the average prison sentence for sexual assault is less than two years and even those sentenced to penitentiary terms return to the community after about four years, usually without receiving any sex offender treatment;
- Most sex offenders have long histories of neglect and deprivation dating to their childhood. Some have histories of increasingly violent sexual behavior;

There are three key implications of these findings that may be mentioned. Firstly, despite decreases during much of the 1990s, the incidence of sexual offending in Canada remains very high. Regrettably, sexual abuse is an all too common occurrence in families and communities throughout Canada, and the

lives of countless individuals, mostly children, are irrevocably changed as a result of the widespread victimization. Sexual offending, therefore, is a trouble that is deeply embedded in Canada's social fabric.

Secondly, it would be futile to expect the justice system to "fix" the problem of sexual offending. Although the justice system does have an important role, the vast majority of sexual offences are never reported to the authorities. Moreover, even when reported, many charges are not proceeded with. Even when offenders are convicted and sentenced, they usually return to the community in relatively short order. The justice system does not have the resources to offer treatment services to even the small proportion of sex offenders that are currently processed through the justice system. And, as will be discussed later, the effectiveness of many of these treatment approaches is disputed by experts in the field. Absent exponential increases in the resources allocated for enforcement and treatment, it is not possible for the justice system to have any appreciable impact on sexual offending in Canada.

Finally, more resources for the justice system could only ever be part of an overall solution, since offending and victimization have already occurred by the time the justice system gets involved. As with other crimes and other social problems, therefore, it is important to see the long-term effects of neglect, abuse and disrupted families and communities. Sexual offenders do have many special needs that must be addressed. But without children growing up in safe and stable families and communities, and without opportunities to develop social skills, gain employment and achieve a quality of life, it is difficult to see how sexual offending can be effectively prevented. Without this kind of commitment, members of marginalized groups will continue to fall through the cracks of inadequate social support networks and the symptoms of societal dysfunction will continue unabated.

Notes

1. Note that these data may not be representative of all offences and offenders. Some of the information is taken from Statistics Canada incident-based UCR2 data. These data represent 46% of the national crime volume and are based on reports from 164 police forces in seven provinces.
2. Overall, Statistics Canada estimated there were 8.3 million offences committed in the six categories of personal and household crimes tracked by the General Social Survey in 1999. During this year, 25% of Canadian's reported being victimized, but only 37% of these incidents were reported to the police (Statistics Canada 2000c).
3. For further information on the CSC and their programs, see: www.csc-scc.gc.ca.

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Aboriginal Healing Foundation
75 Albert Street, Suite 801, Ottawa, Ontario K1P 5E7
Phone: (613) 237-4441
Toll-free: (888) 725-8886
Fax: (613) 237-4442
E-mail: programs@ahf.ca
Website: www.ahf.ca

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