

FOCUS



This section will help you understand

- a. why changes to the justice system for Aboriginal people are necessary
- b. ideas for changing the criminal justice system.

There's no such thing as guilt or innocence in Aboriginal justice; there's only the acknowledgement of responsibility.

—Elizabeth Bellerose, Crown prosecutor of Alberta Cree descent.

A Failing Justice System

In 1991, Aboriginal people in Canada made up only about 3% of the total population, but 11% of the federal inmate population, and 15% of the provincial inmate population. In Manitoba and Saskatchewan, the representation of Aboriginal inmates in provincial jails in 1996 was 49% and 72% respectively.

The Discrimination Factor

Many studies conclude that these disturbing statistics partly result from how the criminal justice system operates. The system, designed by non-Aboriginal people, does not take into account the special circumstances facing many Aboriginal people. The term **systemic discrimination** is used to refer to this problem of the inherent unfairness of the system to a specific group.

The system fails Aboriginal people when it treats them more harshly than non-Aboriginal people and excludes them from the opportunities open to non-Aboriginal people. The following facts have been cited in studies as evidence of systemic discrimination.

- ▶ Compared to non-Aboriginal people, Aboriginal people are more likely to be placed under surveillance and arrested by police. For example, a 1991 Alberta task force found that Alberta police treated minor offences in public places more strictly if committed by Aboriginal people than if by non-Aboriginal people.
- ▶ Lawyers spend less time with Aboriginal clients than with non-Aboriginal clients. This is particularly true in isolated communities where lawyers and court personnel fly in to dispense justice.

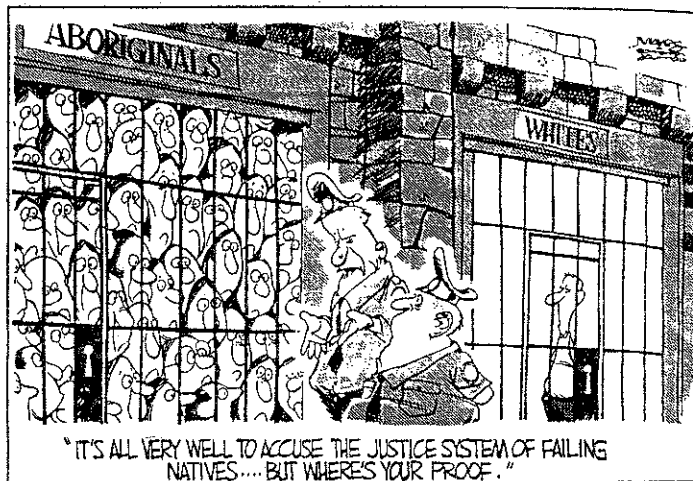


Figure 27-1 How does this cartoon represent the statistics presented above? How does this cartoon misrepresent the statistics?

- ▶ Aboriginal offenders, due to language and cultural barriers, plead guilty more often than non-Aboriginal offenders. They often plead guilty because of a cultural belief in accepting responsibility—even for something that they did not do. As a result, Aboriginal offenders are more likely to receive prison sentences.
- ▶ Aboriginal offenders spend a greater proportion of their sentences in prison than non-Aboriginal offenders because they are more reluctant to participate in rehabilitation programs.
- ▶ Aboriginal offenders have more difficulty obtaining parole. Parole rules often require that offenders stay away from people with criminal records. Aboriginal offenders may come from small reserves where other people have been to prison, and thus they cannot avoid such contact.

Primary Source

THE PEACE AND GOOD ORDER TREATY CLAUSE

All numbered treaties have sections worded similarly to this section from Treaty 6:

They [the undersigned Chiefs on behalf of their bands] promise and engage that they will in all respects obey and abide by the law, and they will maintain peace and good order between each other, and that they will aid and assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this treaty, or infringing the laws in force in the country so ceded.

Some Aboriginal legal scholars have interpreted the last clause of this section as giving chiefs jurisdiction in matters of justice and punishment. With this jurisdiction, they can apply Aboriginal approaches to justice. Other scholars have pointed out a contradiction between maintaining peace and good order and aiding officers of the non-Aboriginal justice system.

The Poverty Factor

Almost one-quarter of all Aboriginal people are unemployed, and 40% of those on reserves receive some sort of social assistance payments. Poor people tend to be over-represented in the criminal justice system for a number of reasons.

- ▶ Environments with high levels of unemployment and poverty are known to have higher crime rates than other environments. In such places, it is easier to become involved in criminal activity.
- ▶ Lack of money and opportunities can lead people to obtain money illegally.
- ▶ Poor people may not be able to afford the best legal representation, and so may have a greater chance of being convicted.

Aboriginal youth living in poverty on reserves, isolated from opportunities and options, are especially vulnerable to involvement in the criminal justice system.



Figure 27-2 Growing up in poverty can be a factor in the over-representation of Aboriginal people in the criminal justice system.

SENTENCED PRISON ADMISSIONS, SELECTED PROVINCES			
Province	Rate/10 000 (Aboriginal)	Rate/10 000 (Non-Aboriginal)	Ratio (Aboriginal to Non-Aboriginal)
British Columbia (1991)	106	25	4.24
Alberta (1991)	681	94	7.24
Saskatchewan (1993)	522	21	24.85
Manitoba (1991)	194	20	9.70
Ontario (1991)	115	37	3.10
Average Rate	323	39	8.28

Figure 27-3 Bias in the criminal justice system and social problems result in the over-representation of Aboriginal people in prisons. Significantly, provinces such as Alberta and Saskatchewan use probation less than other regions. What changes to social life and the criminal justice system could reduce this over-representation?

The Cultural Factor

Elders, social workers, and legal scholars have all pointed out that Aboriginal views of justice are profoundly different from the Euro-Canadian view. As part of their process of justice, Aboriginal peoples believe that offenders should be healed and integrated into their communities. In a discussion paper, the Community Holistic Circle Healing (CHCH) Program in Manitoba outlined these differences between the Euro-Canadian and Aboriginal view.

These different ways of approaching justice also affect how one judges the wrongfulness of an act in the first place. For example, during the Oka crisis in 1990, the act of taking up arms against the police and government was not wrong in the view of some Mohawks—they were rightfully protecting a traditional Mohawk burial ground from being turned into a golf course.

ABORIGINAL JUSTICE PROCESS	EURO-CANADIAN JUSTICE PROCESS
<ul style="list-style-type: none"> consider and right the imbalance (physical, spiritual, mental, and/or emotional) that led to a wrongdoing 	<ul style="list-style-type: none"> establish that the individual is guilty of a wrongdoing
<ul style="list-style-type: none"> consider and correct the external forces that caused the imbalance 	<ul style="list-style-type: none"> consult outside specialists about the implications of the wrongdoing
<ul style="list-style-type: none"> consider and deal with the consequences of the wrongdoing 	<ul style="list-style-type: none"> punish the wrongdoer to deter others from future wrongdoing

CaseStudy



WILDLIFE LAWS

Most treaties between the federal government and First Nations guarantee Aboriginal people the right to hunt and fish according to their traditional practices. Since the signing of these treaties, federal and provincial governments have passed laws restricting hunting and fishing. These laws restrict such things as when and where hunting and fishing can occur, and which species and how many of them can be hunted or caught. Sometimes governments exempt Aboriginal people from these laws, but not always. Many Aboriginal people say they should not be subject to these restrictions because of their treaty rights. Those Aboriginal people who ignore wildlife laws can get into trouble with the law. Some of the resulting court cases have set important legal precedents.

In 1990, the Supreme Court Sparrow Decision affirmed the right of Aboriginal people in Canada to fish for food, cultural, and ceremonial purposes.

In 1996, a B.C. judge ruled on a case involving an Aboriginal defendant who had moved from Ontario (under Treaty 3) to British Columbia (under Treaty 8). The defendant had been charged with killing two deer and an elk calf out of season. The court ruled in favour of the defendant, giving Registered Indians the right to hunt in any and all treaty jurisdictions in Canada. Some non-Aboriginal Canadians opposed the ruling as unfair because they do not enjoy the same right, and they do not want Aboriginal hunters from other regions to exploit the game and fish resources of their region.

Also in 1996, the Supreme Court made a ruling on cases involving the illegal selling of fish. It was affirmed that Aboriginal people have the right to sell or trade fish if they can prove their ancestors did so as an integral part of their culture prior to European contact.

The meaning of the term "right" is very important in these decisions. A right is not a privilege that can be given or taken away. The Aboriginal right to practise traditions involving wildlife resources is based on the existence of these traditions from pre-contact times.



Figure 27-4: Supreme Court rulings have affirmed Aboriginal rights to continue their traditional fishing and hunting practices.

BIOGRAPHY



Subject: Murray Sinclair

Dates: Born in 1951

Most Notable Accomplishment: Manitoba's first Aboriginal judge and co-commissioner of Manitoba's Aboriginal Justice Inquiry.

Thumbnail Sketch: Judge Sinclair and his two brothers and one sister were raised by their grandparents in Selkirk, Manitoba. In 1968, he graduated from the Selkirk Collegiate Institute as athlete of the year and class valedictorian. He planned on becoming a physical education teacher and was one of only a few Aboriginal students enrolled at the time at the University of Manitoba. After two years in the program, he left to look after his grandmother. At 19, while working at the Selkirk Friendship Centre, he was elected vice-president of the Manitoba Métis Federation in the Interlake Region. In 1975, Sinclair was appointed Executive Assistant to Howard Pawley, Manitoba's attorney-general at the time, who influenced him to enroll in the University of Manitoba law school in 1976.

Murray Sinclair's law practice was successful, and in 1988 he was appointed Associate Chief Judge of the Manitoba Provincial Court. With Associate Chief Justice A.C. Hamilton, Judge Sinclair served as co-commissioner of the Public Inquiry into the Administration of Justice and Aboriginal People. Their report, released in 1991, included a powerful discussion of systemic discrimination in Manitoba's justice system and of traditional concepts of Aboriginal justice. The ground-breaking report is included in university law courses throughout the world.



Figure 27-5 Murray Sinclair

Practising Aboriginal Justice

The focus of many Aboriginal justice traditions is on social harmony rather than on an isolated criminal act. Therefore, improving Canadian legal practices may not be enough to achieve Aboriginal justice. According to many, a truly Aboriginal approach to justice can only be practised within the framework of Aboriginal self-government.

Still, many practical results can be achieved by working to change the Canadian justice system. One change is to involve more Aboriginal people in the system as police officers, translators, court workers, and judges. In 1998, there were 18 Aboriginal judges.

Sentencing circles are a further step that can be taken to improve the system. Participants in the circle include elders and many other community members. Each participant has an equal role in discussing sentencing, and they provide follow-up on the defendant's progress. In these roles they can

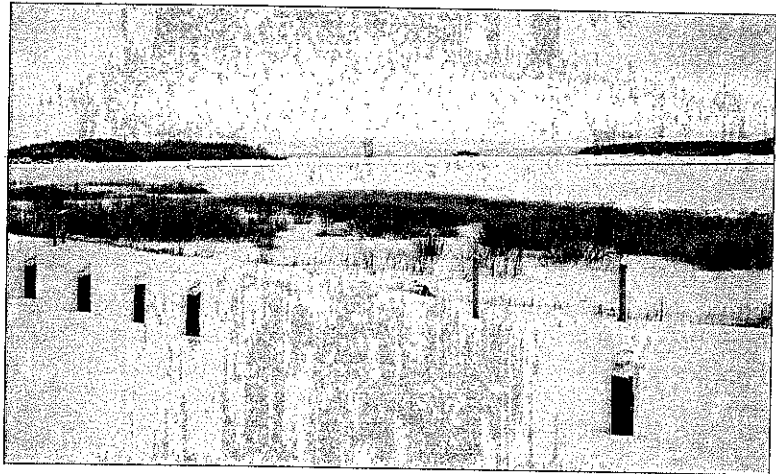


Figure 27-6 A Fort Chipewyan, Alberta sentencing circle banished a 19-year-old to live in the bush shown here. He was under his uncle's supervision until space opened up for him in an alcohol treatment program.

help develop and implement improved policies and programs.

RECONNECT



1. Offer three examples of how the Canadian justice system seems unfair to Aboriginal people.
2. Outline your personal views on the use of Aboriginal sentencing circles.