

# **FINANCING ABORIGINAL JUSTICE SYSTEMS**

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## **INTRODUCTION**

Questions about financing recognize that self-government is an emerging reality in Canada. It is an important topic because it forces us to address the practical problems associated with implementing self-government. It reminds us that we ought not to focus all our attention on philosophical debates. A thorough analysis, however, must look beyond costs. It must also consider benefits. Moreover, there are costs of not moving ahead to allow Aboriginal involvement in the design and operations of justice initiatives. Before proceeding with the analysis, it is useful to recall some of the history that has brought us to the point where financing and other practical matters are high on the agenda for discussion.

## **CANADA'S SAD TRADITION OF "DOING FOR" ABORIGINAL PEOPLES**

For many years, the Canadian approach to Aboriginal policy has been based on imposing non-Aboriginal solutions, designed by non-Aboriginal experts, on the First Nations of Canada. Despite its high costs, this "doing for" approach has never worked very well, and it does not work very well today. In fact, this policy has failed, and it has failed miserably. The symptoms of this failure are all around us and are well known to many of you:

1. Aboriginal rates of admission to adult correctional programs are often twenty to thirty times higher than the rates for non-Aboriginals. Moreover, high recidivism rates indicate that correctional programs are not very effective in rehabilitating or deterring Aboriginal offenders (Hamilton and Sinclair, 1991; Hylton, 1981a).
2. The same admission and recidivism statistics hold true for young offenders (Hamilton and Sinclair, 1991).
3. Aboriginal families have a much higher incidence of family breakdown, and programs designed to prevent breakdown have had limited success. Foster care and adoption placements, which occur more frequently for Aboriginal children, often fail (Johnson, 1983; Kimmelman, 1985).

4. The unemployment rate among Aboriginal people is significantly higher than the corresponding rate among non-Aboriginals, and employment training programs are not very effective in leading to employment (Canada, Department of Indian Affairs, 1989).
5. Substance abuse rates are higher among Aboriginal people as compared with non-Aboriginals, and programs intended to lead to sobriety are not very effective (Hylton et al., 1990; Brody, 1971).
6. Aboriginal people subsist on a fraction of the income of non-Aboriginal Canadians, yet income security programs are not very effective in insuring that the basic sustenance needs of Aboriginal families are met (Canada, Department of Indian Affairs, 1989).
7. Aboriginal people often live in conditions reminiscent of the third world, yet social housing and other infrastructure programs do not seem to be very effective in improving those conditions (Canada, Department of Indian Affairs, 1989).<sup>1</sup>
8. Aboriginal people have a much lower than average participation rate in virtually every type of formal educational program, yet initiatives designed to address the problem of Aboriginal students dropping out have had little effect on retention rates (Barman et al., 1986).
9. Suicide rates among Aboriginal people are three to six times higher than the Canadian average, and programs of prevention don't seem to be able to bring the rate down (Health and Welfare Canada, 1987).
10. Aboriginal people experience a much higher incidence of mental and physical health problems, yet initiatives to address inequities in the delivery of health services do not seem to be having much effect on health status (Canada, Department of Indian Affairs, 1989).

There are many other examples.

Aboriginal people have been disproportionately experiencing virtually every type of social and economic crisis imaginable, and programs designed to address these problems—programs imposed on the Aboriginal people by the non-Aboriginal society—have not been working. There is nothing new in any of this. It is a sad legacy with which we are all too familiar.<sup>2</sup>

In part, it has been the growing recognition of Canada's ill-fated approach to Aboriginal policy that has paved the way for the practical discussions about self-government that are now occurring more and more frequently across this country. There is more to this trend, however. Before there was a willingness to examine self-government as an alternative policy approach in Canada, there first had to be some tinkering with the old ways to see if somehow they could be made to work.

## TINKERING WITH ABORIGINAL POLICY

Over the years, there have been many attempts to sensitize the justice system, and many other systems, to the needs and aspirations of Aboriginal Peoples. These attempts have taken many forms, but there have been a few common types of initiatives.

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

Another approach has involved attempts to establish specialized Aboriginal units, staffed by Aboriginal employees, within larger non-Aboriginal programs and agencies. Perhaps the best known example of this approach is the RCMP's Indian Special Constable Program. Similar programs have, however, been established for probation officers, corrections officers, welfare workers, substance-abuse counsellors, health-care providers and many others.

Still another approach has focused on promoting greater awareness among non-Aboriginal staff about the needs and circumstances of their 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 with a large Aboriginal case load.

Other reforms have involved allowing Aboriginal input into decision-making in non-Aboriginal programs: elders are consulted about the sentencing of offenders; the band council is asked about the apprehension of a child; committees are established to provide community input into the work of non-Aboriginal agencies.

There has also been some experimentation with 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.

What do we have to show for these initiatives? While a detailed evaluation is beyond the scope of this paper, the literature on the subject indicates that these reforms have met with remarkably little success.<sup>3</sup> While some improvements in effectiveness and acceptance have been brought about in isolated instances, on the whole, the gains have been modest. Even with these types of reforms, non-Aboriginal programs do not generally achieve the level of effectiveness or acceptance that these same programs enjoy in non-Aboriginal communities.

So that I am not accused of taking refuge in generalities, I would like

**TABLE I****AFFIRMATIVE ACTION IN THE SASKATCHEWAN JUSTICE  
SYSTEM: SOME SELECTED FINDINGS FOR 1993**

Sector	Number of Staff	Number of Aboriginal	Percent of Staff
<b>Policing</b>			
1. Regina Police Officers	313	9	2.80
2. Saskatoon Police Officers	350	9	2.50
3. RCMP	1,225	75	6.10
4. RCMP Training Academy	115*	1	1
<b>Lawyers</b>			
5. Prosecutors	55	0	0.00
6. Faculty, College of Law	22	2	9.50
7. Legal Aid Lawyers	58	0	0.00
8. Members of the Bar	1,416	12*	1.00
<b>Courts</b>			
9. Judges: Prov. and Sup. Court	84	1	1.20
10. Judicial Officers	46	0	0.00
11. Justices of the Peace	200*	13	6.50
<b>Corrections</b>			
12. Prov. Correctional Centres			10.00*
13. Young Offenders Staff	324	N/A	N/A
14. Parole Officers	25	3	12.00
15. Probation Officers	71	20	28.20
16. Saskatchewan Penitentiary	378	35	9.30
<b>Unweighted Average</b>			5.96

*\*Estimate**Source: Telephone Canvass of the Respective Agencies.*

to comment briefly on affirmative action in the context of the Saskatchewan justice system. A number of reasons for the failure of affirmative action programs have been identified and discussed elsewhere (Hamilton and Sinclair, 1991; Hylton, 1992), but I would like to focus specifically on the recent Saskatchewan experience.

Table I shows the results of affirmative action for selected components of the Saskatchewan justice system. This table shows that, on the whole, the various departments and programs that make up the Saskatchewan criminal justice system have had quite limited success in achieving affirmative action targets, even though they have been trying to improve Aboriginal participation for many years.

Although it is estimated that about 15 percent of the Saskatchewan population is Aboriginal, Table I shows that Aboriginal participation in the justice programs of the dominant society averages about 6 percent. Importantly, Aboriginal participation rates in the areas of policing, courts and "lawyering" are less this average—3.1 percent for policing, 2.6 percent for courts and 2.4 percent for "lawyering." The overall average is brought up by a 15-percent participation rate in corrections.<sup>4</sup> Significantly, there are a number of sectors where there is virtually no Aboriginal participation—judges, judicial officers, prosecutors and legal aid lawyers.

Affirmative action programs appear to have met with very limited success, not only in the justice system, but generally. Employers say that they are truly committed to increasing the numbers of Aboriginal staff but, with few exceptions, their efforts have been largely ineffectual. Even after these programs have been in place for some time, as we have seen in Saskatchewan, there are typically very few Aboriginal staff employed in non-Aboriginal programs.

Reflecting on the Saskatchewan experience, the chairperson of the Human Rights Commission was recently quoted as saying that the Commission is "concerned with the small number of organizations and institutions that have made a commitment to employment equity in the province" (Greschner, 1993). Even among the fifteen organizations with affirmative action programs approved by the Commission, results were described as "meagre."<sup>5</sup>

I do not wish to suggest that there ought not to be continuing efforts to help to make non-Aboriginal programs more effective and more culturally appropriate. Efforts to sensitize the systems of the dominant society to the needs and aspirations of the Aboriginal community will be required, even under a self-government scenario. Nor am I wishing to point the finger at any particular agency. The record of the organization for which I work is no better. There are many complex reasons why these initiatives don't work. What I am suggesting, however, is that the tinkering approaches

I have described are an inadequate policy response to the problems that are before us. They cannot possibly substitute for more fundamental reforms involving the creation of Aboriginal self-governing institutions.

Regrettably, tinkering with the system, whether through affirmative action programs or the other types of initiatives, has had very little impact on improving conditions for Aboriginal people. Nor have these programs fundamentally altered the nature of the relationship between non-Aboriginal service providers and their Aboriginal "clients." The real tragedy is that Aboriginal people continue to experience the same problems, and the programs of the dominant society continue to fail them. This fact is vividly portrayed in corrections' data for Saskatchewan.

Table II shows a breakdown of total and Aboriginal admissions to provincial correctional centres in Saskatchewan for the 1976-77 and 1992-93 fiscal years. The table reveals a number of startling findings:

1. Between 1976-77 and 1992-93, the number of admissions to Saskatchewan correctional centres increased from 4,712 to 6,889, a 46-percent increase, during a time when the provincial population remained virtually unchanged. The rate of increase was 40.7 percent for male admissions and 111 percent for female admissions.
2. During the same period, the number of Aboriginals admitted to Saskatchewan correctional centres increased from 3,082 to 4,757, an increase of 54 percent. Male Aboriginal admissions increased by 48 percent, while female Aboriginal admissions increased by 107 percent.
3. In terms of overall rates of admission, Aboriginals were 65.4 percent in 1976-77 and 69.1 percent in 1992-93.
4. Increases in Aboriginal admissions accounted for 77 percent of the increases in total admissions between 1976-77 and 1992-93.

These data clearly indicate that the problem of disproportionate representation of the Aboriginal people in Saskatchewan's justice system is growing worse, not better. Some 1,700 more Aboriginal people are being incarcerated in provincial jails each and every year, compared with a decade and a half ago.<sup>6</sup> Interestingly, predictions that were prepared in the early 1980s (Hylton, 1981a), and that were rejected by some as too extreme, have in some instances proven to be conservative, particularly in the case of female Aboriginal admissions.<sup>7</sup>

There has been remarkably little reported in the literature about attempts to significantly modify the programs or policies of the dominant society to better meet the needs of Aboriginal Peoples. Rather, the programs and policies developed by non-Aboriginal society are usually taken as a given. They are typically viewed by the authorities as the best (some-



times the only) possible approach for both Aboriginal and non-Aboriginal clients. Various reform efforts, such as those described above, are then instituted to help Aboriginal people fit in with, accept and adjust to the non-Aboriginal system.<sup>8</sup> Little wonder these reforms, which have amounted to a variation on the "doing for" approach, have had so little success.

## **GROWING SUPPORT FOR ABORIGINAL SELF-GOVERNMENT**

In Canada, it seems that we have had to try tinkering with Aboriginal policy, and we have had to witness the failure of this approach. Now, it appears there is a greater willingness than ever before in our history to examine more fundamental changes. There are several positive signs:

1. **POLITICAL SUPPORT.** Our political leadership seems more prepared now, than at any other time in our history, to recognize Aboriginal self-government and to entrench Aboriginal rights in the Constitution. It will be recalled that at the 1983 First Ministers' Conference, the process broke down when a number of premiers got "stuck" on definitions. Even more recently, the Meech round, which culminated in 1987, largely excluded the Aboriginal Peoples from the process of constitutional renewal. This round also failed to recognize the rights and aspirations of Aboriginal Peoples. In fact, it was largely because Aboriginal Peoples were excluded, a fact vividly highlighted by Elijah Harper's actions in the Manitoba Legislature, that the Meech round failed. By 1992, however, all the premiers, the federal government and the Aboriginal leadership of the country could agree to wording to entrench Aboriginal self-government in the Constitution. The Charlottetown Accord, in other words, attested to unprecedented movement on the part of the political leadership of the country. Moreover, the premiers, at their most recent meeting, reiterated their support for Aboriginal self-government and agreed to lobby the federal government.<sup>9</sup>
2. **PUBLIC SUPPORT:** Although the Charlottetown Accord failed to win the support of the Canadian people, it was not because of the Aboriginal package. In fact, surveys conducted by one Aboriginal organization immediately following the referendum indicated that some 60 percent of Canadians supported the constitutional changes that had been proposed to deal with Aboriginal issues. Moreover, half of those questioned were in favour of the government giving a high priority to Aboriginal self-government, even though the Charlottetown Accord had failed (George, 1992). This survey confirms other studies completed by Berry and his colleagues at Queen's University. They

found there has been a "real improvement in the level of goodwill towards Aboriginal peoples by members of the larger society," and that when the public is provided with information about self-government, this results in "positive attitudes" (Berry and Wells, forthcoming).

3. **THE PACE OF REFORM:** Another reason for optimism is that the pace of reform is increasing across the country. This momentum has been encouraged by landmark reports, such as the Penner Report (1983) and the report of Manitoba's Aboriginal Justice Inquiry (Hamilton and Sinclair, 1991) and by the continuing work of the Royal Commission on Aboriginal Peoples. Most of all, however, it has been encouraged by the steadfast resolve of Aboriginal leaders involved in negotiations with the federal and provincial governments. As a result, in virtually every province, significant self-government initiatives are being implemented, or they are in the planning stages (Hylton, forthcoming-b).

### **WHAT'S HOLDING SASKATCHEWAN BACK?**

Despite these positive signs on the national stage, progress has been slow in Saskatchewan. Saskatchewan has been moving ahead, but at a snail's pace. It would be accurate to say that Saskatchewan has been taking two steps forward and one step back. Sometimes it has been two or even three steps back. Consider the last ten years:

1. Land claims agreements have been settled, then repudiated.
2. There have been policing agreements providing for greater Aboriginal involvement but, at the same time, there has been a need to commence inquiries focused on racism in the policing system.
3. There was a Native Court Worker Program, but it was abolished. Now it is being reintroduced.
4. There was funding for Aboriginal programs, such as the Aboriginal Justice of the Peace Program and the Indian Probation Program, then these programs were discontinued.
5. Non-Aboriginal leaders say that Saskatchewan wants sentencing that is more reflective of Aboriginal values, yet the results of a Native sentencing circle were recently appealed by the Crown.
6. Committees and task forces are announced with much fanfare, but their recommendations are not acted upon or the committees themselves are allowed to lapse.

An objective observer would see no consistent pattern in all of this. There has, in fact, been no cohesive or coherent Aboriginal policy in this

province, and anyone who believes we are leading the way has not yet visited other jurisdictions in Canada.<sup>10</sup> The fact of the matter is that Saskatchewan has a long way to go to catch up to other jurisdictions.<sup>11</sup>

What has been holding Saskatchewan back? In part, it is a matter of resolving some of the practical questions. Given that we are moving in the direction of self-government, and there is no question about that, how is it going to work? How will it be funded? Who will pay for it? How will Aboriginal and non-Aboriginal policies and programs be integrated? What about jurisdiction, infrastructure and human resources? Both the Aboriginal Peoples and those working in the existing system want the answers to these questions, and there is a willingness to grapple with these challenges as never before.

I would now like to talk about financing. While it may seem that I have taken a long path to arrive at my ultimate destination, I believe that the discussions about finances must be placed in context. Otherwise, it is too easy to lose sight of the objectives that new financing arrangements are intended to accomplish and why these objectives are important.

## **FINANCING ABORIGINAL JUSTICE INITIATIVES**

As you know, Saskatchewan is experiencing tight fiscal times and, according to government spokespersons, we might wish to consider turning off the light at the end of the tunnel, since the province is likely to remain strapped for the foreseeable future. In tight fiscal times, it is common to hear concerns about the costs of new initiatives and questions about where the money is going to come from.

It must be acknowledged at the outset that the resource "pie" is not likely to get bigger in the coming years. In fact, with the federal government continuing to back away from long-standing transfer and cost-sharing programs, the pie could well get smaller. Therefore, any shift toward self-government will have to occur on the basis of existing resources being reallocated.<sup>12</sup> This will not be easy, but there is, in my opinion, no alternative if there is serious interest in moving ahead with self-government.

You may say, "What is available to be reallocated? Program budgets have already been substantially cut back in recent years!" A careful examination of the resourcing question is obviously warranted.

In Canada, Statistics Canada (1991) estimates that the administration of justice cost \$7 billion in 1989-90. Moreover, some 100,000 people are employed in the system. This represents about one-fifth the amount expended on health care. But what about Saskatchewan?

According to government budget estimates for the 1993-94 fiscal year, and other information obtained from various justice agencies, it can be

**TABLE III: SASKATCHEWAN EXPENDITURES FOR THE ADMINISTRATION OF JUSTICE, 1993**

Prosecutions	\$6m
Court Services	\$13m
Provincial Judges	\$5m
Federal Judges	\$8m
Legal Aid	\$8m
Provincial Policing	\$63m
Regina Police Services	\$30m
Saskatoon Police Services	\$27m
Other Policing Services	\$30m*
Adult Corrections	\$40m
Young Offenders	\$16m
Federal Corrections	\$23m
Parole	\$4m
Facilities for some but not all of the above	\$15m
Other costs (loss to victims, cost of family support and treatment programs for offenders, etc.)	\$12m*
<b>TOTAL</b>	<b>\$300m</b>

\*Estimate

*Source: Government of Saskatchewan Budget Estimates and a Telephone Canvass of Justice Agencies.*

estimated that the costs for the administration of justice in Saskatchewan will run to some \$300 million this year. As displayed in Table III, a significant amount will be spent on policing and corrections, with smaller amounts allocated for prosecutions, judges, legal aid and other parts of the justice system.<sup>13</sup> The numbers should be viewed as a quite conservative estimate of total costs.

Of this total amount, a very significant proportion can be directly attributed to providing justice services to Aboriginal people in this province. It is difficult to calculate an exact amount. At one extreme, one could

take the 70 percent of inmates in the provincial correctional system and, applying this, say that 70 percent of resources, some \$210 million, is spent on Aboriginal justice in Saskatchewan. Obviously, this is simplistic. The truth of the matter is that we can only estimate the costs. Even the most conservative estimate, however, would suggest that every year tens of millions of dollars are involved. These amounts are allocated to the "doing for" approach in the justice arena. Even shifting 1 percent a year of these funds to Aboriginal organizations would infuse significant resources for the development of Aboriginal programs.

Some will say this is good theory but, from a practical standpoint, impossible. There is no question that such a reallocation would be difficult and painful, but what is the alternative? Those in the justice field, and our political leaders, must recognize what those in other fields are also learning—funds are currently allocated to "doing for" programs that don't work. Funds are being provided to non-Aboriginal agencies, staffed by non-Aboriginal personnel, to define problems and solutions of behalf of the Aboriginal Peoples.

How would this shift of resources from existing programs to Aboriginal programs occur? The answer to this question is complex and it will depend, in part, on whether or not the Aboriginal program is part of a land-based system of self-government.

Reserve-based models for transferring funds to Aboriginal communities are becoming well established (Hawkes and Maslove, 1989). The much-maligned federal Indian Affairs department, for example, has been proceeding with a variety of new funding arrangements based on both unconditional and conditional grants. In 1991, over 70 percent of the department's budget was transferred directly to Indian communities for programs such as education, child welfare, social services, housing and community infrastructure. Moreover, in this same year, there were some seventy-three Alternative Funding Agreements (AFAs) involving some 136 bands. These agreements provide more flexible funding and administrative arrangements that give local community leaders the discretion to reallocate funds once certain service levels have been reached (Da Pont, 1991).

These funding approaches highlight the fact that resources can be transferred directly to Aboriginal communities. In many cases the transfers can be by way of unconditional grants. These types of grants provide the Aboriginal leadership with the greatest discretion in allocating funds. In some instances, however, unconditional grants can be supplemented with conditional grants to provide funds to address specific community needs for which other fiscal arrangements are not adequate.

Of course there are many complex questions. What about locally generated funds from economic development, gaming and taxation? What about

equalization? What about fungibility?<sup>14</sup> What about the changes that increased control over financial resources will have on Aboriginal institutions? Fortunately, there is a growing body of literature beginning to emerge on these questions (Maslove and Dittburner, forthcoming; Hawkes and Maslove, 1989). The point is that models are now being used in other areas of services, and in other jurisdictions, that could be adapted to cover a variety of justice services. Moreover, it is reasonable to assume there will be pressure from the Aboriginal leadership to move in this direction. After all, why should justice services be exempt from the types of self-governing arrangements that are emerging in other fields?<sup>15</sup>

It is relatively easy to envision how federal and provincial governments could provide transfer payments to Aboriginal communities because it is happening already. The implementation of self-government initiatives where there is no land base, however, poses a whole new set of questions. As complex as the on-reserve situation may be, it pales in comparison with the complexity of establishing Aboriginal institutions to serve Aboriginal people not living on a land base.

Self-government divorced from a land base is complex, in part because members of many bands, covered by different treaties, often co-habit the same off-reserve community, along with the Métis and non-status Indians. For example, in a recent analysis of Regina, Peters (forthcoming) found residents from twenty-seven reserves, five nations, seven treaty areas, six provinces and two countries. Assuming there is a willingness to move in the direction of self-government, the permutations and combinations of possible institutional arrangements are nothing short of mind boggling. Yet, the issues must be addressed.

The reality is that most Aboriginal people in Saskatchewan do not reside on reserves. The Federation of Saskatchewan Indian Nations (1993) estimates that half the treaty Indians in Saskatchewan live off-reserve. When one considers Métis and non-status Indians, the numbers off reserves are considerable.<sup>16</sup> Moreover, there is a continuing trend of migration from reserve to non-reserve communities, particularly to urban areas. Thus any funding approach that only considered reserves would be quite limited.

If we are to abolish the "doing for" approach, it means diverting funds from non-Aboriginal agencies that are currently being funded by the federal, provincial and municipal levels of government to provide services to Aboriginal people in urban and other non-Aboriginal communities. This will require these agencies to do with less; it will require a devolution of responsibilities; it will require sharing of power, and it will require new and creative partnerships. This is not a recipe that will excite the appetite of defenders of the status quo. Nonetheless, it can be done, and it should be done.

While these ideas may sound farfetched, I would like to provide an example of resource reallocation in an urban centre that is from outside the realm of the present discussion of Aboriginal justice issues. It illustrates what can be accomplished when there is political and "bureaucratic" will.

Recently, the Saskatchewan government approved the establishment of a Francophone-run school system in Regina. The enabling legislation was passed in the last session of the legislature. As a result, the new Francophone board will take over responsibility for a school previously run by the Regina Separate School Board. Moreover, provincial grants for the students who were previously part of the separate system will, in future years, be directed to the new Francophone board. A Separate School Board official was recently quoted as saying that the "board will cooperate with the francophone community in establishing its school system" (Boyle, 1993). Substitute "Aboriginal" for "francophone," and you get the idea. Moreover, what has happened to the school system could also happen to health, social services, justice and other areas of programming.

### **SOME IMPLICATIONS OF ABORIGINAL SELF-GOVERNMENT**

If Canada and Saskatchewan are to move in the direction of Aboriginal self-government, and appropriate funding arrangements and other policies are to be put in place, what can be expected? Of course, there will be disruptions, difficulties, costs and meetings—lots and lots of meetings. But what about the "up" side? Any evaluation of costs must also examine savings and benefits.

It is not necessary to gaze into a crystal ball to anticipate the likely outcome of this new approach to Aboriginal policy. While much more needs to be known, numerous evaluative studies of so-called parallel Aboriginal programs have already been completed (for example, Morse, 1980; Hurd and Hurd, 1986; Hudson and Taylor-Henely, 1987; Coopers and Lybrand, 1986; Social Policy Research Associates, 1983). Some common findings are emerging, and the picture they portray is far more encouraging than the dismal results of the "tinkering" programs.<sup>17</sup>

Aboriginal programs run by and for Aboriginal people appear to be more successful than the corresponding programs set up by the dominant society in:

1. incorporating principles, beliefs and traditions that are a part of Aboriginal culture;
2. attracting and retaining Aboriginal staff;
3. involving the Aboriginal community in the design and delivery of programs;

4. fostering greater acceptance by the individual client and the Aboriginal community;
5. creating economic benefits for Aboriginal communities;
6. extending services previously unavailable through the non-Aboriginal program;
7. drawing attention to issues in Aboriginal communities and generating interest and involvement in, and support for, programs to deal with these issues in Aboriginal communities;
8. providing levels of service that approach or equal levels of service available to non-Aboriginal communities;
9. reducing the need for the intervention of the state in the lives of Aboriginal people and communities, and
10. providing services at a cost that is no more, and is sometimes less, than the cost of corresponding non-Aboriginal programs.

Despite the many positive accomplishments of Aboriginal programs, the literature (for example, Singer and Moyer, 1981; Hurd and Hurd 1986; Hudson and Taylor-Henley, 1987; Coopers and Lybrand, 1986, Bryant et al., 1978) also suggests there are a number of common problems. Most of these problems have to do with the lack of support and commitment that has characterized relationships with the dominant society.

1. Financial resources provided to these programs are typically inadequate when compared with the resources made available to corresponding non-Aboriginal programs.
2. The future of these programs is often in doubt. Budgets are subject to review as the programs are often viewed by funders as "experimental" or "soft" in nature.
3. 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.
4. 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.
5. Relationships between Aboriginal programs and the dominant non-Aboriginal programs are often characterized by uncertainty about respective roles and responsibilities, and sometimes by mistrust and outright acrimony.
6. 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 by Aboriginal and non-Aboriginal agencies. This is a particular problem, for example, with off-reserve Indians.

One can only imagine the levels of effectiveness and efficiency that could be achieved by Aboriginal programs with the unambiguous support of the dominant society.

Moving ahead will require new tripartite mechanisms involving Aboriginal, federal and provincial leaders. These mechanisms, by and large, are not currently in place. This is even more the case in justice, because of the split federal-provincial jurisdiction over the administration of justice.

## CONCLUSION

In this paper, I have argued that despite numerous reports and continuing evidence of problems with effectiveness and equity, Saskatchewan is lagging behind other provinces, and the justice system is lagging behind other systems, in implementing progressive policies based on the principles of Aboriginal self-government. There are many model programs and model funding arrangements that could be borrowed from other jurisdictions but, until quite recently, there has been limited interest in these, except in the Aboriginal community. Progress can occur only if the failures of the past are recognized, and if there is a willingness to bear the pain that inevitably accompanies structural change on a massive scale.

Aboriginal programs have the very real potential of creating greater levels of satisfaction with the justice system among both Aboriginals and non-Aboriginals. Aboriginal programs can achieve higher levels of effectiveness and they need not involve more costs. Moreover, a stronger commitment to Aboriginal programs has the potential to create social and economic conditions in Aboriginal communities that will reduce the incidence of those very problems we have created a vast state apparatus to control. This is prevention in the true sense of the word. This prospect should interest every treasury board, every justice system official and every public servant in a leadership role.<sup>18</sup>

There is indeed a cost associated with Aboriginal justice initiatives and other self-government programs, but there is a higher human and financial cost associated with present structures. We have seen the costs of non-Aboriginal programs escalate; we have seen more and more Aboriginal people being subjected to these programs of social control; we have witnessed the ineffectiveness of these programs; we have heard the growing frustration of the Aboriginal Peoples.

There is also the very real eventuality that a justice system unwilling to change will increasingly fall into disrepute. Even more than today, it could become viewed by Aboriginal Peoples as a holdout, as a last vestige of colonialism, and as a system where outmoded and unjust attitudes and practices are allowed to continue. The choices are clear: justice can be part of the problem or part of the solution.

Those at this conference, and particularly non-Aboriginals in leader-

ship positions, have an important opportunity and responsibility to bring about a better future. We need to become informed, and we need to build understanding and tolerance in our professions, in our institutions and among the public. We should commit ourselves to working with the Aboriginal leadership to develop a more effective and efficient justice system for all the people of this province.

## NOTES

- 1 A recent report by the Commons Aboriginal Affairs Committee estimated that an infusion of \$3 billion was required to improve housing for on-reserve Aboriginal people.
- 2 There have been many studies. With regard to Aboriginal justice issues in Saskatchewan, the specific focus of this Conference, my own research in policing and corrections is now nearly fifteen years old (Hylton, 1981b; 1981c). The FSIN/Canada/Saskatchewan Joint Studies (1985) were completed in the mid-1980s. More recently, Judge Linn and her task forces have completed two major reports (1992a; 1992b) and there have been many other published and internal government reports. Nor could it be said that Saskatchewan has been alone in struggling with Aboriginal justice issues. In fact, Horn and Taylor-Griffiths (1989) have prepared a bibliography on the subject that runs 275 pages without annotations. Some would say, with justification, that the problems have been studied to death!
- 3 For a discussion of the reasons for the failure of these types of initiatives, see Hamilton and Sinclair (1991), Hylton (forthcoming-a), and VanDyke and Jamont (1980).
- 4 This average is reduced to about 10 percent when the probation program is removed from the calculations. Although the corrections participation rates are higher than those for other sectors, it also needs to be borne in mind that the clients of these programs are overwhelmingly Aboriginal. Recent numbers indicate that about 70 percent of inmates in provincial correctional centres for men, 80 percent of the female inmates and 45 percent of the inmates at Saskatchewan Penitentiary are Aboriginal.
- 5 Among these fifteen organizations, 2.9 percent of their employees were Aboriginal, whereas 12.2 percent of the work force is Aboriginal (Greschner, 1993).
- 6 I have no doubt that numbers from policing, courts, prosecutions, legal aid and other areas of the justice system would bear out the corrections numbers; however, data from these sectors were not readily available.
- 7 For example, in 1980, based on the trends that were then evident, I predicted there would be 657 female admissions in 1993, whereas there were actually 779. I projected 604 female Aboriginal admissions, whereas there were actually 647. Actual numbers for males and Aboriginal males, however, were below what I had predicted. See Hylton (1981a).
- 8 Perhaps one of the best examples of this approach was the Indian Residential School. Traditional Indian education was undermined; Indian children

were removed from their communities; they were required to learn the customs and traditions of the dominant society, and they were punished for practising their language or culture. This concept was based on a belief that Indian culture and language were inferior and that Indians should assimilate to the "better" ways of the dominant society (Haig-Brown, 1988). Similar assumptions exist today and they find their way into many non-Aboriginal programs.

- 9 See Cox (1993). In recent months, concerns have been expressed about the willingness of the Campbell government to honour previous commitments in this regard. The possibility that considerable backsliding may occur at the federal level cannot, at this juncture, be ruled out.
- 10 It is sad, but also curious, that so little progress has been made in Saskatchewan, since the Federation of Saskatchewan Indian Nations and its predecessor organization, the Federation of Saskatchewan Indians, has been one of the most determined and articulate Aboriginal organizations in Canada. Ironically, more progress has been made in some jurisdictions where the Aboriginal leadership has not been as strong. It is a matter that warrants careful study. My own observation is that the strength of the Aboriginal voice in Saskatchewan has, at times, been a source of concern and even fright. Governments and the non-Aboriginal community have often reacted with studied inaction.
- 11 It is beyond the scope of this paper to describe the various Aboriginal initiatives that have been undertaken in Canada with respect to policing, courts, corrections and other areas of justice services. These programs have, however, been described elsewhere (Hamilton and Sinclair, 1991; Horn and Taylor-Griffiths, 1989; La Prairie, forthcoming; Royal Commission on Aboriginal Peoples, 1993).
- 12 Ironically, it has been my experience, having worked both inside and outside government, that governments and their finance advisors frequently react to tough fiscal times by saying, in effect, "We can't afford new ideas." We have been witnessing this approach in Saskatchewan, even though there has never been a more critical time to think creatively about the problems we are facing. The one exception is health reform; however, it must be remembered that this initiative is being driven, to some significant extent, by the fiscal realities. The health-care budget amounts to approximately one-third of the total provincial budget.
- 13 Significant costs associated with losses experienced by victims, costs incurred by other programs (for example, health and social services) to provide services to offenders, victims and their families, and other costs, are almost impossible to quantify without extensive study. Therefore, they have been estimated for purposes of the discussion.
- 14 Funds that are fungible can be reallocated from the originally intended purpose to some other purpose. Not all funds received by Aboriginal communities are fungible.
- 15 Some lawyers would wish to jump up at this point and present a variety of legal and constitutional arguments saying that the justice system is unique,

- and that the status quo should be maintained. Frankly, the type of conservatism that has emerged in legal advice given to governments of the dominant society has become tiresome. In my opinion, clear direction has to be given to these advisors to find ways of moving ahead. Providing excuses for not moving ahead seems far less productive.
- 16 Peters (forthcoming), for example, estimates there are 4,500 Métis and non-status Indians in Regina alone.
  - 17 It is not my intention to downplay the importance of justifications of self-government that rely on political, historical, moral or legal arguments. Whatever these justifications may be, however, there are also a number of practical advantages that will accrue to self-governing arrangements. It is important not to lose sight of these, particularly given the fiscal realities of the day.
  - 18 A substantial body of historical research now exists on traditional Aboriginal approaches to dealing with many social issues and social problems (for example, McDonnell, 1991, 1992; Clark, 1990; Morse, 1983; Hylton et al., 1985). It appears that these approaches have much to offer to those who are involved in designing programs for non-Aboriginal populations. I am thinking, for example, of Aboriginal concepts of holistic healing; traditional methods of alternative dispute-resolution to deal with community justice problems, and the reliance on the extended family to provide child care and child protection. There are many other examples. Rather than the Aboriginal Peoples adopting the approaches of the dominant society, a tendency that has worried some observers (La Prairie, forthcoming), the dominant society should aim to emulate Aboriginal approaches.

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