

Inuit and the Criminal Justice System:  
Future Strategies for Socio-Legal Control  
and Prevention.

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INUIT AND THE CRIMINAL JUSTICE SYSTEM: FUTURE STRATEGIES FOR  
SOCIO-LEGAL CONTROL AND PREVENTION

by

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## INTRODUCTION

Beginning with an overview of the incidence of Inuit criminality in the Northwest Territories, this paper examines the issues entailed in the formulation of an appropriate framework for policy and program development. To this end, the following discussion has been guided by the theoretical framework emerging from a comprehensive literature review by Havemann et al. (1984) on the explanations for the over-involvement of indigenous people with the criminal justice system and proposed solutions. Specifically, the authors emphasize that policy "must address itself to the macro-level of socio-economic planning, rather than attempt to improve the situation with adjustments at the micro-level of service delivery systems and programs" (p. xxix). Thus, the considerations for a framework for future justice and prevention strategies are raised within the context of political, socio-economic, and cultural self determination, which also include proposals for the recognition and application of traditional Inuit law-ways and sanctions.

### I THE INCIDENCE OF CRIME

Prior to our examination of the current incidence of Inuit criminality and offender profile, the following, derived from an earlier review of the literature (Finkler, 1976), provides a synopsis of the emergence of changing patterns of criminal behaviour in the Northwest Territories.

"Prior to the 1960's, Morrow (1970, 1972b) indicated that the majority of incidents involving Inuit, such as homicides, assaults, infanticides, etc., that warranted the intervention of the agents of law enforcement and the administration of criminal justice as a result of their redefinition of these acts as criminal were congruent with the traditional Inuit normative and reaction system. However, the significant increase of southern involvement in northern affairs and development after World War II had a monumental effect in altering the complexion of the traditional life styles of the aboriginal people, as well as contributing to the emergence of new patterns in deviance.

The 1960's have seen a dramatic rise in violations of the Criminal Code, federal statutes, and territorial ordinances in the Northwest Territories, with offences against the Liquor and Motor Vehicle Ordinances, according to Jubinville (1971), comprising approximately 50 percent of the

total. Aside from the predominance of violations of the Liquor Ordinance (the Honigmans, 1965; R.C.M.P. Annual Report, 1962; Slobodin, 1966), liquor has been a contributing factor in offences against the Criminal Code, such as rape or attempted rape, indecent assault (Morrow, 1970); assault, breaking and entering and petty theft (R.C.M.P. Annual Report, 1966; Solicitor-General Annual Report, 1968/69). In addition to an increase in liquor violations, offences against the person, mostly within the family unit (McReynolds, 1972), and property offences, the Annual Report by the Solicitor-General for 1970/71 cites the emergence in the Northwest Territories of the non-medical use of drugs, particularly in the larger northern communities" (p. 22).

In order to establish the parameters of Inuit criminality, I will refer to my earlier research in the Baffin Region (Finkler, 1981). First, Table 1 presents the distribution of the number of actual offences known to the R.C.M.P. and proven to be founded by offence type, Baffin Region, N.W.T., 1975-80. It should be noted that while R.C.M.P. crime statistics do not record ethnicity, given the fact that the population of the Baffin Region is primarily Inuit (eg. comprising 83.8% in 1980), it is reasonable to assume that the following distributions based on this data source generally depicts the incidence of Inuit criminality.

Specifically, notwithstanding some annual fluctuations, the distribution was generally predominated by violations under territorial ordinances/municipal by-laws, followed by offences against property, other criminal code, and against the person and sexual offences. Table 2, the distribution of the number of actual offences, Baffin Region, 1975-80, indicates that violations under the Liquor Ordinance predominated those under territorial ordinances/municipal by-laws; and in regard to categories against property, other criminal code, and against the person and sexual offences, in order of frequency, these comprised breaking and entering and theft under \$200., wilful damage and assaults (not indecent), respectively. In reference in the above research, it is interesting to note that the distribution of actual violent offences (entailing murder, attempted murder, manslaughter, rape, other sexual offences, wounding, assaults (not indecent) and robbery) in relation to the total number of offences, Baffin Region, N.W.T., 1975-80, as found in Table 3, indicated that this category represented only a small portion of the total, reflecting a high of 13.6% in 1976, gradually declining thereafter to a low of 8.8% in 1980.

TABLE 1

DISTRIBUTION OF THE NUMBER OF ACTUAL OFFENCES, BY OFFENCE TYPE, BAFFIN REGION, NWT, 1975-80

Offence Type	YEAR											
	1975		1976		1977		1978		1979		1980	
	N	%	N	%	N	%	N	%	N	%	N	%
Against the Person and Sexual Offences	266	11.9	225	14.8	224	14.8	206	12.8	206	11.1	235	9.8
Against Property	401	17.9	365	24.1	528	24.1	479	29.8	513	27.5	622	26.1
*Other Criminal Code	311	13.9	236	15.6	241	15.6	287	17.9	295	15.8	393	16.5
Drugs	36	1.6	32	2.1	47	2.1	71	4.4	86	4.6	90	3.8
*Other Federal Statutes	55	2.5	41	2.7	28	2.7	11	.7	24	1.3	12	.5
*Territorial Ordinances/ Municipal By-Laws	1088	48.6	481	31.7	419	31.7	451	28.1	669	35.9	950	39.8
Traffic Enforcement	80	3.6	136	9.0	112	9.0	102	6.3	70	3.8	83	3.5
GRAND TOTAL	2237	100.0	1516	100.0	1599	100.0	1607	100.0	1863	100.0	2385	100.0

\*excluding traffic offences

TABLE 2

DISTRIBUTION OF THE NUMBER OF ACTUAL OFFENCES, BAFFIN REGION, NWT, 1975-80

OFFENCES	YEAR					
	1975	1976	1977	1978	1979	1980
HOMICIDE - TOTAL	2		1		1	
ATTEMPTED MURDER - TOTAL	1	2				1
Rape	8	4	9	5	11	14
Indecent assault (Female)	10	6	9	8	4	13
Indecent assault (Male)	2	2	1		1	
Other sexual offences	5	8	4	2		5
SEXUAL OFFENCES - TOTAL	25	20	23	15	16	32
Wounding	7	4	4	4	6	3
Bodily harm	39	44	50	39	37	27
Police	4	3	4	4	4	2
Other peace/public officers	13	1		1		
Other assaults	157	132	124	135	123	144
ASSAULTS (not indecent) - TOTAL	220	184	182	183	170	176
ROBBERY - TOTAL			2			2
BREAKING AND ENTERING - TOTAL	90	119	226	196	178	266
THEFT MOTOR VEHICLE - TOTAL	46	62	81	45	87	65
THEFT OVER \$200 - TOTAL	26	38	50	45	63	60
THEFT \$200 AND UNDER - TOTAL	227	139	152	168	157	204
HAVE STOLEN GOODS - TOTAL	2		4	4	5	9
FRAUDS - TOTAL	10	7	13	21	23	16
OFFENSIVE WEAPONS - TOTAL	18	19	18	8	19	26
Arson	12	4	11	9	12	14
Bail violations	2	4	1	1	12	30
Disturb the peace	94	44	68	41	38	85
Escape custody	1	1		2		2
Indecent acts					1	1
Kidnapping		2		1		
Obstruct public/peace officer	1	1	2	1	1	1
Prisoner unlawfully at large			2	1		2
Trespass at night	1	2	4	6	2	2
Wilful damage	124	99	96	119	110	168
Other Criminal Code offences	76	79	57	106	119	88
*OTHER CRIMINAL CODE - TOTAL	311	236	241	287	295	393
ADDICTING OPIATE-LIKE DRUGS - TOTAL	3					
Possession			1		8	3
Trafficking			1			
Importation			1			
OTHER DRUGS - TOTAL			3		8	3
Possession			33	61	48	68
Trafficking			9	9	29	19
CANNABIS - TOTAL	31	32	42	70	77	87
CONTROLLED DRUGS (Trafficking) - TOTAL			1	1	1	
Trafficking			1			
RESTRICTED DRUGS - TOTAL	2		1			
Customs Act	2	3	7		12	
Immigration Act			3	3	2	
Juvenile Delinquents Act	40	13		2	1	
Other Federal Statute offences	13	25	18	6	9	12
*OTHER FEDERAL STATUTES - TOTAL	55	41	28	11	24	12
Liquor	1073	463	383	444	642	935
Other Territorial Ordinances	15	17	36	6	23	14
*TERRITORIAL ORDINANCES - TOTAL	1088	480	419	450	665	949
*MUNICIPAL BY-LAWS - TOTAL		1		1	4	1
Criminal negligence (operating a motor vehicle)		1		2		
Fail to stop or remain (Criminal Code)	5	2			3	4
Fail to stop or remain (Territorial Ordinance)	4	3	5	8	2	10
Dangerous driving (Criminal Code)	1		1	1	2	3
Dangerous driving or without due care and attention (Territorial Ordinance)	6	2	6	5	4	
Fail or refuse to provide sample of breath						5
Driving while impaired	38	35	33	27	28	24
Driving while disqualified or while licence suspended or cancelled (Criminal Code)		1				
Other traffic offences (Federal Statutes)	1					
Other traffic offences (Territorial Ordinance)	25	92	67	59	30	35
Other traffic offences (Municipal by-laws)					1	2
TRAFFIC ENFORCEMENT - TOTAL	80	136	112	102	70	83
GRAND TOTAL	2237	1516	1599	1607	1863	2385

\*excluding traffic offences

TABLE 3

DISTRIBUTION OF ACTUAL VIOLENT OFFENCES IN RELATION TO  
TOTAL NUMBER OF OFFENCES, BAFFIN REGION, NWT, 1975-80

OFFENCE TYPE	YEAR											
	1975		1976		1977		1978		1979		1980	
	N	%	N	%	N	%	N	%	N	%	N	%
VIOLENT OFFENCES	248	11.1	206	13.6	208	13.0	198	12.3	187	10.0	211	8.8
PROPERTY OFFENCES	401	17.9	365	24.1	526	32.9	479	29.8	513	27.5	620	26.0
OTHER*	1588	71.0	945	62.3	865	54.1	930	57.9	1163	62.4	1554	65.2
TOTAL	2237	100.0	1516	100.0	1599	100.0	1607	100.0	1863	99.9	2385	100.0

\*Other includes offences under the criminal code, federal statutes, territorial ordinances, and municipal by-laws.

To summarize my earlier research (Finkler, 1973, 1976 and 1981) the incidence of Inuit criminality is predominated by offences under the N.W.T. Liquor Ordinance and against property, along with a frequency of offences related to disorderly conduct, assaultive behaviour and non-medical use of drugs. Furthermore, as I have indicated elsewhere (Finkler, 1982b), "these studies established a significant relationship between alcohol and crime, wherein intoxicants were a major precipitating/facilitating factor in physical and sexual assaults, property offences such as wilful damage, petty theft, or breaking and entering while intoxicated to search for liquor or goods to exchange for alcohol" (p. 3).

In regard to a profile of the Inuit offender, on examination of my research in corrections (Finkler, 1981), the findings, in terms of the nature of the offence that resulted in the incarceration, generally correspond to the above distribution. Specifically, Table 4, the number of Inuit admissions by most serious offence, Baffin Correctional Centre, 1975-80, indicates a concentration of admissions for break and enter, followed by theft, breach of probation, assaults, other sexual offences, and violations under the Narcotic Control Act. Furthermore, additional characteristics of this profile, based on a review of Inuit admissions to the Baffin Correctional Centre, 1980 (Finkler, 1981), entail the following:

- "1. regarding the distribution by the most serious offence, the concentration of admissions centred on those involved in break and enter, comprising 32.9%;
2. with respect to offence location, 87.3% of admissions originated from the Baffin Region, dominated by 49.4% from Frobisher Bay;
3. 57.0% of the total admissions involved more than one charge in their aggregate sentence;
4. 48.1% of admissions entailed two to four charges;
5. 85.1% of offenders had more than one previous territorial incarceration;
6. 64.2% of offenders had one to three previous territorial incarcerations;



7. 50.6% of admissions were sentenced by the Territorial Court, followed by 35.4% incarcerated as a result of decisions by the Justice of the Peace Court;
8. 65.8% of admissions were between 18 and 29 years in age, with a concentration in the age category 18 to 20, representing 31.6%;
9. 83.5% of admissions comprised sentences less than 182 days, predominated by the sentence category, 32 to 92 days, constituting 38.0% of the total;
10. regarding marital status, 84.8% of admissions represented single persons;
11. 55.7% of admissions achieved a level of education from grade 7 to 9;
12. 59.5% of admissions were unemployed prior to their arrest; and,
13. regarding usual occupation, 50.6% of admissions were classified as general labour (p. 64-65)."

Finally, notwithstanding the above, it is important to note a trend in the changing profile of Inuit offenders. Specifically, as stated elsewhere (Finkler, 1982a):

"changes in the characteristics of Inuit admissions are reflected in the emergence of younger offenders, demonstrating a wider range of criminal activity, along with an earlier debut in delinquent behaviour, and a greater degree of criminal intent in the commission of the offence. Furthermore, despite their higher level of academic achievement, generally speaking, they have limited or no occupational skills and have not acquired the requisite traditional Inuit skills (or in some cases, expressed any interest) during the course of their upbringing in a town environment" (p. 38).

While this paper does not propose to review the literature regarding explanations for the recent emergence and rise in the incidence of Inuit involvement with the criminal justice system, the

TABLE 4

NUMBER OF INUIT ADMISSIONS , BY MOST SERIOUS OFFENCE, BAFFIN CORRECTIONAL CENTRE, 1975-1980

Most Serious Offence	YEAR							Total
	1975	1976	1977	1978	1979	1980	N	
Manslaughter				1			2	.7
Rape		1	2	1			7	2.5
Attempted Rape			6	1		3	2	.7
Other Sexual Offences	2	4	6	3	3	6	24	8.7
Wounding		1			1	1	3	1.1
Assaults	6	6	6	2	2	5	27	9.8
Offensive Weapons	3	2	2		1	1	9	3.3
Break and Enter	3	5	13	15	12	26	74	26.8
Theft	4	3	7	7	4	9	34	12.3
Having in Possession					1	1	2	.7
Arson	1						1	.4
Mischief in Relation to Property		1	2	2			5	1.8
Forgery			2		1		4	1.5
Corruption and Disobedience	1					1	2	.7
Disorderly Conduct			1	1			2	.7
Impaired Driving		1	1			2	4	1.5
Driving with more than 80 Mgs. of Alcohol in Blood		1	1		1	2	5	1.8
Failure or Refusal to Provide Breath Sample						1	1	.4
Taking Motor Vehicle Without Consent		2		1		1	2	.7
Prison Breach	1				1		4	1.5
Failure to Comply with Probation Order	2	7	6	4	2	9	30	10.9
Other Criminal Code		2					2	.7
Narcotic Control Act	1	1	2	3	4	4	15	5.4
Food and Drug Act				1			1	.4
Other Federal Statutes	2	1	2			1	6	2.2
NWT Liquor Ordinance		1		1		4	6	2.2
NWT Motor Vehicle Ordinance			1			1	2	.7
<b>GRAND TOTAL</b>	<b>26</b>	<b>39</b>	<b>54</b>	<b>43</b>	<b>35</b>	<b>79</b>	<b>276</b>	<b>100.1</b>

following comments are in order. Generally speaking, this involvement tends to be attributed to the conflict incurred during the adaptation to or interface with white dominated society and structures during a time of accelerated social change. The manifestations of this maladaptation to the dominant culture (such as value conflict, disadvantageous socio-economic standing, dependency, and breakdown of traditional family relationships, primary group society, as well as social control) are seen as contributing factors in the rising incidence of Inuit coming to the attention of the criminal justice system.

However, as Havemann et al. (1984) point out, the above approaches primarily entail an order/assimilationist perspective wherein the resulting disadvantageous position and present vulnerability of indigenous people is explained in terms of value conflict and culture of poverty, and therefore blames the "victim" through its focus on the problems of a distinct group rather than on the system. This acceptance of the world as it is, and assumption "that all individuals in society are equal and compete in neutral social institutions" (p. 5) have a significant implication for policy and program strategies by not going "beyond the victim or service delivery system in their recommendations for change or solution to problems" (p. 6). In the opinion of the above authors, in order to "understand the phenomenon we must look at the whole of society" (p. 7), including the structure of power relationships resulting from colonization, modernization, and industrialization, and the role of the justice system in facilitating these processes, as well as the exercise of economic power between developed and underdeveloped regions. On this basis, the authors suggest "that the over-involvement of Indigenous people with the criminal justice system is primarily a consequence of colonization and resulting underdevelopment" (p. XXIX).

## II A FRAMEWORK FOR POLICY AND PROGRAM DEVELOPMENT

Prior to our consideration of the issues entailed in a framework for policy and program development, it is worth noting that the major thrusts in current or proposed remedies in regard to the situation of native peoples and the delivery of socio-legal services in the N.W.T., as elsewhere, comprise the indigenization of the justice system and initiatives in cross-cultural and public legal education. Specifically, examples of indigenization, i.e. the utilization of indigenous persons and organizations in the delivery of existing socio-legal services and programs, have been reflected in ongoing efforts to recruit natives as RCMP special constables or regular members, Justices of the Peace, social workers, and corrections staff, etc., along with indigenous involvement in community-based alternatives to institutionalization (eg. community service orders, fine option

program) and in services to the addicted. Secondly, a greater emphasis is being placed on public legal education initiatives by the Legal Services Board of the N.W.T., Native Courtworkers, and Frobisher Bay Legal Services, etc., and on cross-cultural education courses to sensitize non-native staff throughout the justice system. However, the reservation surrounding the above, as well as the majority of other initiatives aimed at the improvement of the situation of indigenous involvement with the justice system, is that they represent modifications at the micro-level of the system by the very nature of their conceptualization and implementation within the context of an imposed framework for socio-legal services and programs.

Furthermore, doubts remain as to the effectiveness and ability of the above initiatives in reducing and preventing the disproportionate involvement of natives in the justice system - a level which remains unacceptable in terms of its socio-legal, economic and medical consequences. For example, regarding the indigenization of policing, the literature review conducted by Havemann et al. (1984) failed to reveal whether this approach, "and the informal justice measures it implies, improve the quality of life, are simply cheaper, or widen the net of the criminal justice system to the detriment of the original goals" (p. xiii); or whether recruitment of indigenous persons within existing legal institutions "will result in their ultimately having control over their own treatment within these institutions" (p. xv).

It is also worth noting that there has been a reticence by indigenous communities, groups, and organizations to participate in crime control and prevention. However, in this regard it must be understood that community involvement, particularly in the delivery of community based measures, is dependent not only on its acceptance of its responsibility to participate in socio-legal control, but significantly on its access to the criminal justice planning and programming process. While the criminal statistics regarding the incidence of Inuit criminality, presented elsewhere in this paper, demonstrate the increasing involvement of Inuit in the justice system, long term solutions to reducing this involvement necessitate a redefinition of the role and relationships of indigenous people within the state. Thus the need for a macro-level framework for socio-legal policy and programming, one that recognizes the need for changes in the structures of existing power relationships which restore to indigenous people the authority to exercise control over their political, socio-economic and cultural affairs, including socio-legal and in the making of laws. Such changes would facilitate the development of autonomous, indigenous controlled structures for the delivery of justice services and programs which hold greater promise for reducing indigenous involvement with the justice system than modifications to the existing, yet imposed system, embodied in such initiatives as indigenization.

In regard to the future direction of justice policy and programming, Inuit autonomy in socio-legal affairs may lead to the development of a justice system based on the traditional normative structure and system of sanctions that is conducive to negotiated, as opposed to adjudicated, resolution of conflict. To summarize an earlier review of the anthropological literature (Finkler, 1983),

"the system of social control in traditional Inuit society was one whose values stressed intra-group cooperation and avoidance of interpersonal conflict. The aim in dispute settlement was to restore the peace and social equilibrium of the community as opposed to seeking justice or punishment. This process was characterized by its flexibility, tolerance and pragmatism wherein the determination of sanctions was not preoccupied with the question of guilt or responsibility, but rather in curtailing unacceptable behaviour and preventing recidivism. Furthermore, reaction to conflict, albeit without the existence of formalized institutions for socio-legal control, entailed an assessment of the offender's personality and situational circumstances, demonstrating an individualized approach to treatment without necessarily isolating him from society and refraining from invoking sanctions more disruptive than the crime itself" (p. 8-9).

While the courts in the N.W.T. have recognized Inuit customary law concerning marriage, divorce and adoption, current initiatives for the development of truly autonomous indigenous controlled delivery of justice services and programs, including the authority to make laws, are intricately related to demands for aboriginal self government and the entrenchment of aboriginal rights in the Constitution, and may also be incorporated as part of a land claims settlement. However, it is within the context of Nunavut, the proposed creation of a provincial type government and public institutions in the N.W.T. which reflect and provide for the special needs and circumstances of Inuit and their culture, wherein I will direct my concluding remarks in terms of its potential for an autonomous Inuit controlled justice system.

Specifically, the development of an autonomous regionally or community controlled justice system in a Nunavut public government is possible by the very nature of its establishment which entails the acquisition of control over decision-making in programs and services that significantly affect the region's population, and are adapted or changed to better reflect their needs and cultural values. With respect to socio-legal services and programs, the task facing a Nunavut

government rests in determining the nature and viability of the application of alternative structures and merit of their relevant grounding or evolution within a traditional normative and sanction framework. At a preliminary level, the Nunavut Constitutional Forum (1983) has already agreed to the establishment of an independent judiciary and recommended it "continue to study the application of Inuit customary law in Nunavut, propose specific provisions for a Nunavut constitution and, with the results of that work, plan further for the overall administration of justice within Nunavut" (p.29).

To conclude the discussion, it should be noted that while present initiatives exploring the issues related to the recognition of customary law in Nunavut aim at restructuring the judiciary to reflect Inuit customary law, this does not preclude the broader application of the basic principles of traditional Inuit normative structure as the frame of reference for socio-legal policies and programs.

Specifically, this approach would entail the following:

1. entrenchment of the traditional goal in conflict resolution directed toward restoring the peace and social equilibrium of the community as the guiding principle for all components of the justice system; and
2. restoration of the traditional flexibility of the reaction and sanction system wherein prognosis for recidivism and avoidance of sanctions more disruptive than the crime itself comprise the primary considerations in decision-making.

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