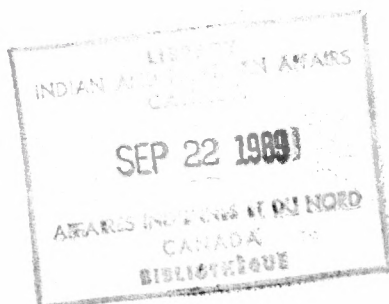


COMMUNITY PARTICIPATION IN  
SOCIO-LEGAL CONTROL:  
THE NORTHERN CONTEXT

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**COMMUNITY PARTICIPATION IN SOCIO-LEGAL CONTROL: THE NORTHERN CONTEXT**



by

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Paper prepared for presentation to the Conference, Knowing the North:  
Integrating Tradition, Technology and Science, sponsored by the Boreal  
Institute, University of Alberta, Edmonton, November 20-22, 1986.

## INTRODUCTION

This paper is based primarily on the findings emanating from the author's socio-legal field research in the Northwest Territories (Finkler 1976 and 1981) and related writings on the subject (Finkler 1982a, 1982b, 1983a, 1983b, 1985a and 1985b). In addressing the issue of community participation in socio-legal control within the northern context and focus on Inuit, the paper begins with an examination of modernization or the process of micro-urbanization in terms of its consequences on traditional mechanisms for social control. Within this framework of social change, the evolution of community participation in social control is traced to contemporary times, concluding with an assessment of current initiatives and prognosis for increased involvement.

## I. MODERNIZATION AND ITS EFFECTS ON SOCIO-LEGAL CONTROL

Post WW II development of the north precipitated in a dramatic transformation of aboriginal society traditionally characterized by its primary group relationships, dependency and homogeneity. The resulting invasion of Euro-Canadian society and the proliferation of its socio-economic, medical, political, legal, and educational infrastructures, administration and policy initiatives had extremely far-reaching consequences on the fabric of northern society. By the 1950s and 1960s an unprecedented number of Inuit from small isolated camps were enticed to migrate to semi-urban communities to benefit from greater opportunities for wage employment and newly established educational, medical and social services. Ironically, however, in many respects northern development was occurring at the expense of aboriginal society when we consider the creation of a state of socio-economic and political underdevelopment within that society in combination with a general deterioration in the quality of life.

Specifically, the costs of the social dislocation arising as a consequence of modernization and accelerated social change had disastrous effects on the maintenance of traditional mechanisms for social control within the family and community. For example, the erosion of primary group relationships, family solidarity, parental authority, traditional male/female roles and close ties between generations, and the emergence of changing value orientations, in combination with a growing sense of frustration and alienation emanating from a relegated inferior socio-economic status in a white dominated society, significantly undermined the traditional framework for community social control. The resulting breakdown in aboriginal society has culminated in a rising and currently disproportionate incidence of crime among native peoples, predominantly entailing assaultive behaviour, break and enter, theft, and alcohol and drug abuse, with the latter occurring independently as well as frequently constituting the context/precipitating factor in the commission of the previous offences.

In tracing the evolution of community participation in social control, I begin by examining the period during the 1960s to mid 1970s - a timeframe characterized by the proliferation of formal agencies for socio-legal control which had displaced the pivotal role of the traditional community in this regard - which must be understood within the aforementioned context of modernization and its effects on reducing the community's capacity to participate in this process.

## II. EVOLUTION OF COMMUNITY PARTICIPATION IN SOCIAL CONTROL

In examining the evolution of community participation in socio-legal control, initially, its limited involvement was due to the breakdown in traditional control mechanisms and the community's increasing reliance on intervention by the formal agencies which also eroded the coordinating basis for community response to threatening behaviour. One obstacle to the community's willingness to accept its responsibility to participate in the control process may be attributed in part to its diminishing tolerance toward crime and the resulting increased social distance from offenders in its midst. Moreover, additional constraints on community participation have been linked to the following:

"... a neglect of adequate communication with Inuit, or an information gap, impeding their understanding of the concepts and mechanisms inherent in our Canadian law and formal agencies of socio-legal control; ... and a limited success of the existing programs or services in the Northwest Territories and Frobisher Bay for the resocialization of Inuit offenders, based on southern oriented social work concepts and techniques, and administered by non-Inuit" (Finkler 1976:2).

While it would be inaccurate to portray developments during this period as being totally devoid of community initiatives in the control process, the extent of its involvement was limited primarily for the above reasons. However, factors influencing change in this process only really began to emerge and gain momentum as a result of the Law Reform Commission's 1974 report on the disproportionate number or over-representation of natives in the criminal justice system which prompted the convening in 1975 of a National, as well as Federal-Provincial Conference in Edmonton on natives and the criminal justice system. The far-reaching implications of this conference toward ameliorating the plight of native peoples in conflict with the law, at a territorial as well as national level, have a bearing on our discussion and merit a summation of issues raised and conference recommendations.

The Edmonton Conference must be considered a landmark in providing the baseline and overview of the problems, issues, concerns and mitigative responses entailed in addressing the dilemma of natives and the law. Specifically, the conference focussed on the following: the inability of Euro-Canadian oriented socio-legal services to respond to native needs; the gaps in services for natives; the lack of involvement of natives in the planning, policy formulation and delivery of justice services; the need to sensitize those non-natives involved in the delivery of criminal justice services for natives; the disproportionate number of natives coming to the attention of the criminal justice system; concern over the differential treatment of natives; and the lack of understanding among natives about the law and the criminal justice system.

Mitigative measures advocated during the conference were embodied in two major recommendations calling for a general focus on the increased need for native involvement in policy formulation and delivery of justice services for natives; and for increased culturally grounded and innovative models more responsive to natives. The thrust of the conference recommendations, apart from their provision of a policy framework vis-a-vis natives and the justice system, rested in the indigenization of the Euro-Canadian based criminal justice system. With respect to the north, the issues and recommendations addressed during the conference were appropos to the northern context, and perhaps, more so given the demographic reality of the N.W.T. with its majority native, yet small culturally diverse population on the threshold of modernization and accelerated social change.

Within the N.W.T. momentum for action generated by the conference has stimulated an increasing sensitivity and recognition by those responsible for the criminal justice system of the need for changes and interventions to be more culturally grounded and relevant. This initiative, primarily entailing indigenization of the justice system, has been conducive to facilitating community participation in social control. However, additional factors have enhanced this process.

Specifically, community action has materialized in part as a consequence of increasing doubts within about the effectiveness of the interventions and control strategies exercised by the formal justice system in arresting the increasing tide of unacceptable and disruptive behaviour within the community. This development, combined with the emergence of a native majority in the Legislative Assembly and the influence of its northern/cultural perspective during debates on the direction of socio-legal programs and policies and allocation of resources, and the consciousness-raising efforts by native organizations vis-à-vis aboriginal rights and issues has precipitated in increased culturally focussed initiatives in the north. The resulting context has stimulated confidence in operating within a cultural framework as the basis for direction and action, and heightened community awareness as to its pivotal role and responsibility in the control process - ever so critical to the success of any crime control strategy.



### III. CURRENT INITIATIVES AND PROGNOSIS FOR INCREASED INVOLVEMENT

Presently community participation in social control is evident on many fronts including its long-standing involvement in controlling alcohol abuse, and more recently, in the area of spousal assault. These areas constitute concrete examples of the successful efforts by the justice system to foster community ownership of the problem and its involvement in sharing the responsibility for social control through its delivery of locally determined remedial programs.

In regard to alcohol control, communities have utilized the legal restraints available in the Liquor Ordinance enabling them to determine the desired level of restrictions on the purchase, sale or consumption of alcohol. These restraints monitored by community alcohol education committees have significantly reduced the hazardous and excessive consumption of alcohol with a resulting decline in the incidence of liquor precipitated criminality, especially inter-personal violence. The aforementioned committees have also taken on counselling and educational roles in their communities. With respect to spousal assault, community participation in mitigative measures has witnessed the formation of a northern network of community based action groups to address the problem. This development has precipitated in the emergence of community based and operated shelters as well as in community initiated research to further identify the extent of the problem and local needs. The recent establishment of youth justice committees to deal with young offenders reflects another area where the community has responded in the belief that solutions to problems must come from within.

In part, current initiatives in community involvement, aside from responding to the demographic reality of a dominant native population in its midst, arise in reaction to the scarcity of socio-legal resources in the north which dictates the optimal utilization of existing resources through privatization and regionalization. This is especially pertinent in regard to renewed efforts aimed at the development of alternative community based non-institutional means to address the dilemma posed by the gap in non-institutional sentencing options in this vital area. As I have summarized elsewhere (Finkler 1985a: 149) the specific focus of contemporary initiatives constitutes the following:

"... 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 R.C.M.P.

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 (e.g. 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."

Despite the aforementioned improvements in the situation of natives vis-à-vis the justice system and its provision of an enhanced framework for community participation in social control, in my opinion, the system falls short of resolving the problem. Specifically, while socio-legal services are increasingly sensitive to meeting native needs and encouraging community ownership of the problem, the implementation of responsive policies and programs throughout the system is required to reflect this commitment. Moreover, much remains to be accomplished in facilitating indigenous access to the justice system and its resulting involvement in the conceptualization and delivery of culturally relevant policies and programs, especially in the area of community based alternatives to institutionalization.

These comments may be better understood if we recognize the fact that the above initiatives represent refinements purely at the micro-level of the system and are consequently limited by virtue of "their conceptualization and implementation within the context of an imposed framework for socio-legal services and programs" (Finkler 1985a: 150). By continuing to view the situation of natives in conflict with law from a narrow micro-perspective and "focus attention exclusively on the application of current criminal justice prevention and treatment models to native communities is to ignore the real issue of the effects of modernization and what these mean for the social, economic and cultural life of the community and the behaviour of its inhabitants" (LaPrairie 1986: 6).

With reference to Havemann et al. (1984) the majority of the above initiatives emanate from an order/assimilationist perspective focussing on the amelioration of the plight of a disadvantaged and culturally vulnerable group through indigenizing the system as opposed to examining the system itself which maintains and perpetuates the status quo of aboriginal socio-economic development through modernization and its resulting social dislocation. The fact remains that the application of indigenization, the predominant thrust in current initiatives dealing with natives before the law, is restrictive in focus and merely constitutes a tinkering with the system. As LaPrairie (1986: 16) points out, "our efforts may be piecemeal as we are limited by the way in which we have conceptualized indigenization and measure its success more in

terms of the number of Aboriginal people employed in the system, than on how concepts inherent in the policies are operationalized and how these interact with the existing procedures and practices of the criminal justice system". Significantly, the literature fails to confirm whether the recruitment of aboriginal people "will result in their ultimately having control over their own treatment within these institutions" (Havemann et al. 1984: XV).

Consequently, any discussion vis-à-vis the prognosis for increased community involvement must be approached within a macro-level framework,

"... 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" (Finkler 1985a: 150).

Within this context current initiatives linked to aboriginal demands for self-government, entrenchment of aboriginal rights in the Constitution, land claims settlement and the proposed division of the N.W.T. constitute the means with the greatest potential for aboriginal society to achieve its socio-economic, political, cultural, and legal self-determination. With respect to the sphere of justice, progress on the above points entailing the acquisition of control over socio-legal policies and programs will result in the evolution of an autonomous regionally or community controlled justice system.

To conclude, aboriginal people recognize the need to accept ownership of the problems of anti-social behaviour in its midst, and that solutions must come from within. Notwithstanding, I am convinced that long term solutions to the tragedy of natives in conflict with the law and the enhancement of increased community involvement in the control process will only emerge through success on the aforementioned political fronts that provide the macro-framework for development of an autonomous, indigenous controlled justice system.



REFERENCES

- FINKLER, H. (1976). Inuit and the Administration of Criminal Justice in the Northwest Territories: The Case of Frobisher Bay. Ottawa: Indian and Northern Affairs.
- \_\_\_\_\_. (1981). The Baffin Correctional Centre: A Review of Current Programs and Alternatives. Ottawa: Indian and Northern Affairs.
- \_\_\_\_\_. (1982a). Corrections in the Northwest Territories 1967-1981, With a Focus on the Incarceration of Inuit Offenders. Canadian Legal Aid Bulletin, 5 (No. 1) 27-38.
- \_\_\_\_\_. (1982b). Policy Issues In The Delivery Of Correctional Services In The Northwest Territories. Paper presented to the American Society of Criminology's 34th Annual Meeting in Toronto, November 4-6, 1982.
- \_\_\_\_\_. (1983a). Violence And The Administration Of Criminal Justice in Northern Canada, in K. Johnson (Ed.): Insights And Strategies For Confronting Violence: Conference Proceedings (pp. 233-246). Anchorage: School of Justice, University of Alaska.
- \_\_\_\_\_. (1983b). Legal Anthropology In The Formulation Of Correctional Policy In The Northwest Territories, Canada. Paper presented to the Symposia On Folk Law And Legal Pluralism, XIth International Congress of Anthropological and Ethnological Sciences, Vancouver, August 19-23, 1983.
- \_\_\_\_\_. (1985a). Inuit And The Criminal Justice System: Future Strategies For Socio-Legal Control And Prevention. Etudes Inuit Studies, 9 (No. 2) 141-152.
- \_\_\_\_\_. (1985b). The Role of Traditional Inuit Measures for Social Control in Correctional Policy and Administration, in A.N. Allott and G.R. Woodman (Eds.): People's Law and State Law; the Bellagio Papers (pp. 321-325), Dordrecht: Foris Publications.
- HAVEMANN, P. et al. (1984). Law And Order For Canada's Indigenous People. Ottawa: Ministry of the Solicitor General of Canada.
- LAPRAIRIE, C. (1986). Aboriginal Criminal Justice In Canada: Some Theoretical Considerations. Draft paper prepared for Ministry of the Solicitor General of Canada.