



ADMINISTRATION OF JUSTICE OFFENCES AMONG ABORIGINAL PEOPLE: COURT OFFICIALS' PERSPECTIVE

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1. Introduction

Administration of justice offences¹ (AOJOs) are an important issue for the criminal justice system and the Aboriginal Courtwork (ACW) program for two main reasons. First, two types of AOJOs: failure to comply with a court order and breach of probation are among the five types of offences that represent half the cases brought before adult criminal courts². Second, in jurisdictions covered by the Integrated Correctional Services Survey, more than 25% of the cases of remand were attributable to an administration of justice offence (AOJO).^{3,4}

The time and resources invested to handle these offences have a negative impact on the efficiency of the criminal justice system. AOJOs result not only in additional expenses, but also reduced efficiency of the justice system because they add to the number of cases to process and may increase the complexity of ongoing cases.⁵

Moreover, although the proportion of convictions for AOJOs is similar to that for all offences before the adult criminal courts, the incarceration rate for AOJOs is much higher than for other offences. In fact, the risk of being sentenced to imprisonment increases if the individual failed to comply with a court order. However, the length of the prison sentences for AOJOs is usually shorter in comparison to offences overall⁵.

Additionally, AOJOs seem to be linked with a probability of reoffending. A study conducted in Saskatchewan⁶ showed that 50% of individuals found guilty of an AOJO returned to the correctional services in the four years following their release.

ACW programs regularly send administrative data to the Department of Justice. These data support previous research which show that Aboriginal people have a high prevalence of AOJOs.^{7,8,9,10} Moreover, some researches in the field believe that AOJOs can be considered a

¹ In this report, "AOJO" is used to refer to offences such as failure to comply with a probation order, conditional sentence order or release order (such as a bail order or conditional release order); failure to appear before a court or being unlawfully at large.

² Other offences mentioned are: driving under the influence, theft and common assault.

³ Includes Newfoundland and Labrador, Nova Scotia, New Brunswick, Ontario and Saskatchewan.

⁴ D. Calverley, "Adult Correctional Services in Canada, 2008/2009," (Ottawa: Statistics Canada, 2010).

⁵ Statistics Canada, "Offences against the administration of justice, 1994-1995 to 2003-2004," *Juristat* 26 no.1 (2006).

⁶ Statistics Canada, "Returning to correctional services after release: A profile of Aboriginal and non-Aboriginal adults involved in Saskatchewan from 1999-2000 to 2003-2004," *Juristat* 25 no.2 (2005).

⁷ Statistics Canada, "Adult Criminal Court Statistics, 2008/2009," *Juristat* 30 no. 2 (2010).

⁸ Statistics Canada, "The incarceration of Aboriginal people in adult correctional services," *Juristat* 29 no. 3 (2009).

⁹ C. Lafreniere, N. Fontaine, E. Comack, "The Challenge for Change: Realizing the Legacy of the Aboriginal Justice Inquiry Report," (Paper presented at the Provincially Appointed Independent Committee for Consultation on a New Women's Correctional Facility in Manitoba, Canadian Centre for Policy Alternatives, 2005).

¹⁰ Statistics Canada, "Outcomes of Probation and Conditional Sentence Supervision: an analysis of Newfoundland and Labrador, Nova Scotia, New Brunswick, Saskatchewan and Alberta, 2003-2004 to 2004-2005," *Juristat* 26 no.7 (2006).

factor that is historically linked to the over-representation of Aboriginal people in the justice system since they significantly add to their criminal records.^{11,12}

Studies that examine the factors that lead Aboriginal people to commit AOJOs are rare. Researchers conducting a study in Alberta¹³ interviewed Aboriginal people who were or had recently been on probation and who had been convicted of an AOJO. The three factors mentioned most often were alcohol or drug use, peer influence and necessary interactions with a person listed in a restraining order (usually a member of the family or spouse).

The available administrative data on the high proportion of ACW program clients who committed AOJOs led program managers to become interested in studying the issue further. Together with the Research and Statistics Division (RSD), the ACW program subsequently developed a body of research for the purpose of better understanding AOJOs committed by Aboriginal people.

In this Research in Brief, the results of interviews conducted with court officials will be presented. These professionals handle large numbers of AOJOs daily, committed by various groups including Aboriginal people. Their experiences and perceptions on the circumstances that influence the prevalence of AOJOs among Aboriginal people may contribute to a clearer understanding of this issue and help define strategies to reduce this type of offence.

2. Objective

This research seeks to learn about the experiences and perceptions of court officials regarding:

- AOJOs most frequently committed by Aboriginal people—adults and youth;
- The factors that contribute to the commission of AOJOs among Aboriginal people;
- Individuals with the most influence on reducing AOJOs among Aboriginal people;
- Strategies to prevent AOJOs among Aboriginal people.

3. Methodology

A five-question questionnaire was sent to 44 court officials (Crown prosecutors, defence counsel and judges) in the five jurisdictions (Alberta, Manitoba, Nunavut, Ontario and Saskatchewan) that agreed to participate in this research (see Table 1). The questionnaire was completed during a phone interview conducted by a researcher from the RSD. The questionnaire was composed of open and closed questions that allowed for quantitative and qualitative analyses of the data obtained.

¹¹ C. LaPrairie, “Examining Aboriginal Corrections in Canada,” (Ottawa: Ministry of Solicitor General Canada, 1996).

¹² R. Pelletier, “The nullification of section 718.2(e): aggravating Aboriginal overrepresentation in Canadian prisons,” *Osgoode Hall L.J.* 469 no.39 (2001).

¹³ P. LaBoucane-Benson, “Aboriginal Administration of Justice Offences Research Project: Aboriginal Probation Client Qualitative Research Report,” Native Counselling Services of Alberta: BearPaw Research.

TABLE 1: OCCUPATIONAL ROLE OF THE PARTICIPANTS BY JURISDICTION

| Jurisdiction | Occupational role of the participants | | | Total |
|--------------|---------------------------------------|-----------------|-------------|-------------|
| | Crown prosecutors | Defence counsel | Judges | |
| Alberta | 2 | 0 | 6 | 8 18% |
| Manitoba | 1 | 1 | 2 | 4 9% |
| Nunavut | 3 | 2 | 2 | 7 16% |
| Ontario | 3 | 4 | 8 | 15 34% |
| Saskatchewan | 4 | 3 | 3 | 10 22.7% |
| Total | 13 29.5% | 10 22.7% | 21 47.7% | 44 100% |

4. Limitations

It is important to note that the results of this research reflect only the point of view of the participants on the questions asked. The sample is fairly limited so the conclusions do not allow for any generalization and are used only to provide a general idea of the court officials' perceptions of the issue in question. Moreover, it is important to note that the distribution of participants by province and by occupational role is not uniform; Ontario is the province of origin of most of the participants and judges are the most represented officials in this sample.

5. Results¹⁴

5.1 Noted prevalence of AOJOs among Aboriginal adults and youth

We asked participants to rank five AOJOs (failure to appear in court, failure to comply with a probation order, failure to comply with a release order, failure to comply with a conditional sentence order and being unlawfully at large) according to the frequency they were committed by Aboriginal adults and youth, based on their experience.

Regarding Aboriginal adults, participants ranked the frequency of AOJOs as follows:

1. failure to comply with a release order;
2. failure to comply with a probation order;
3. failure to appear in court;
4. failure to comply with a conditional sentence order; and
5. being unlawfully at large.

¹⁴ Data obtained through the questionnaire developed for this research will occasionally be presented according to the participants' occupational role. Although analyses were conducted to verify the existence of trends among jurisdictions, the differences were not defined, likely due to the small sample size.

In regard to Aboriginal youth,¹⁵ participants seem to have less uniform perceptions, particularly when indicating the most frequent AOJO. Failure to comply with a release order and failure to comply with a probation order seem to take first place, according to the respondents. The participants seem more consistent in stating that failure to appear and being unlawfully at large are less common and rank third and fourth respectively.

5.2 Factors contributing to the prevalence of AOJOs among Aboriginal people, according to the participants' perceptions

Court officials answered an open ended question on the factors that might contribute to the commission of AOJO by Aboriginal people. Various factors were mentioned. For ease of presentation, the factors most cited by participants were sorted into two main categories: individual factors and justice system factors.

The first category (individual factors) includes factors directly related to the Aboriginal person's socio-economic, psychological or family situation, among others. The second includes factors that are related to the resources and practices of the justice system. The participants' perception varied slightly regarding certain factors raised based on their occupational role within the justice system. For this reason, results are presented by occupation role of the participant (see tables 2 and 3).

TABLE 2 – MOST IMPORTANT INDIVIDUAL FACTORS THAT CONTRIBUTE TO AOJOS ACCORDING TO COURT OFFICIALS' PERCEPTIONS, BY OCCUPATIONAL ROLE OF THE PARTICIPANT

| Individual factors | Occupational role of the participants | | | |
|--|---------------------------------------|-----------------|---------|---------|
| | Crown attorneys | Defence counsel | Judges | Total |
| | N (%) | N (%) | N (%) | N (%) |
| Substance abuse / addiction | 13 (100) | 10 (100) | 18 (86) | 41 (93) |
| Ambivalence or apathy towards justice system | 8 (61) | 5 (50) | 6 (29) | 19 (43) |
| Family issues / lack of family support | 5 (38) | 1 (10) | 11 (52) | 17 (39) |
| Mental health / cognitive / developmental issues | 3 (23) | 6 (60) | 6 (29) | 15 (34) |
| Poverty | 4 (31) | 3 (30) | 7 (33) | 14 (32) |
| No fixed address | 5 (38) | 2 (20) | 7 (33) | 14 (32) |
| No stable employment | 2 (15) | 1 (10) | 10 (48) | 13 (29) |
| Lack of transportation to appear | 3 (23) | 1 (10) | 9 (43) | 13 (29) |
| Peer pressure / gang membership | 2 (15) | 1 (10) | 2 (9) | 5 (11) |

*Participants could identify multiple factors.

¹⁵ Eight participants (18.2% of the sample) did not reply to this question, stating they did not have experience with young clients.

Substance abuse was cited by the vast majority of the participants, regardless of their occupational role. Crown prosecutors, defence counsel and judges all seemed to agree that alcohol and drug abuse among Aboriginal people is a main factor associated with AOJOs.

Moreover, more than half of the prosecutors (61%) considered the Aboriginal people's ambivalence and apathy towards the justice system as a factor that contributes to AOJOs, whereas counsel (60%) seem particularly aware of the mental health, cognitive or developmental issues of Aboriginal people. Judges (52%) seemed to consider that family issues and lack of support from the family are rather important factors.

TABLE 3 – MOST IMPORTANT JUSTICE SYSTEM FACTORS THAT CONTRIBUTE TO AOJOs ACCORDING TO COURT OFFICIALS' PERCEPTIONS, BY OCCUPATIONAL ROLE OF THE PARTICIPANT

| Justice system factor | Occupational role of the participants | | | |
|---|---------------------------------------|-----------------|---------|---------|
| | Crown attorneys | Defence counsel | Judges | Total |
| | N (%) | N (%) | N (%) | N (%) |
| Insufficient resources | 9 (70) | 5 (50) | 11 (52) | 25 (57) |
| Conditions imposed are inappropriate / unrealistic | 2 (15) | 5 (50) | 5 (24) | 12 (27) |
| Language barriers / individual does not have representation or legal support in the language of his or her choice | 0 (0) | 1 (10) | 2 (9) | 3 (7) |

*Participants could identify multiple factors.

Among the justice system factors, participants mentioned insufficient resources the most. According to their comments, the category "insufficient resources" includes community resources (insufficient substance abuse and mental illness treatment programs, and insufficient numbers of social workers, substance abuse counsellors and police officers) and criminal justice system resources (insufficient bail supervision programs, enforcement measures and consequences for certain breaches of conditions, number of judges, lawyers, prosecutors and parole officers in certain communities, and resources dedicated to assessing and counselling the accused).

Additionally, participants were asked to list the three factors that contribute the most to the commission of AOJOs. Overall, participants listed "substance abuse" first (66% of participants) of the factors leading to AOJOs among Aboriginal people, lack of resources second (20% of participants) and ambivalence/apathy towards the justice system third (11% of participants). Although the importance granted to each factor varies according to the occupational role held by the participant, these were the three main factors according to the vast majority of the participants.

TABLE 4 – THREE MAIN FACTORS CONTRIBUTING TO THE COMMISSION OF AOJOS, BY OCCUPATIONAL ROLE OF THE PARTICIPANT

| Three main factors that contribute to the commission of AOJOS | Occupational role of the participants | | | |
|---|---------------------------------------|-----------------|---------|---------|
| | Crown attorneys | Defence counsel | Judges | Total |
| | N (%) | N (%) | N (%) | N (%) |
| Factor 1 – Substance abuse | 8 (61) | 8 (80) | 13 (62) | 29 (66) |
| Factor 2 – Lack of resources | 1 (8) | 3 (30) | 5 (24) | 9 (20) |
| Factor 3 – Ambivalence / apathy towards the justice system | 4 (31) | 0 (0) | 1 (5) | 5 (11) |

*Participants could identify multiple factors.

5.3 Stakeholders most likely to help reduce AOJOS among Aboriginal people

Participants were asked to indicate who, among the various justice system stakeholders, was most likely to help reduce the number of AOJOS committed by Aboriginal people, while carrying out their duties. The participants' points of view varied slightly on this subject.

According to nearly half the prosecutors interviewed (n=6 or 46%), responsibility lies with the Aboriginal person him or herself but some also mentioned prosecutors (n=2 or 15%), defence counsel (n=1 or 8%) and community programs and services (8%). One respondent stated that all stakeholders have a role to play.

Opinions among defence counsel differed: 20% (n=2) believe that prosecutors would be most likely to help reduce AOJOS, 20% (n=2) indicate judges, 20% (n=2) indicate community programs and services and 10% believe all stakeholders have a role to play (n=1).

As for the judges, 29% (n=6) indicated that community programs and services could have the greatest influence. Others believe that it is defence counsel (n=3 or 14%), police (n=3 or 14%), judges (n=1 or 5%), or the Aboriginal person (n=1, 5%). Some also believe that all stakeholders have a role to play (n=2 or 9%).

5.4 Strategies to prevent AOJOS¹⁶

More than half of the participants (54%) we asked about strategies to adopt to prevent AOJOS, mentioned increasing resources. More specifically, increasing resources dedicated to treating substance abuse (21%), community programs and social assistance for Aboriginal people (20%) and monitoring accused/offenders living in the community (14%).

“It would go a long way if we had more treatment services in Northern regions particularly for alcoholism and public awareness campaigns around family violence, and enforce assurances and breaches of bail conditions because there is not much of a deterrent here.” (Prosecutor)

¹⁶ The data obtained through this question is qualitative. For this reason, extracts from interviews cited below sometimes apply to more than one category. Moreover, the categories are not exclusive, meaning a participant's statements might apply to many categories. Therefore, the number of participants represented in each category is only to give the reader an idea of the prevalence of this type of answer among the data collected.

“Intensive substance abuse treatment, and closer supervision and more resources for probation officers to supervise.” (Prosecutor)

“More treatment options and beds available in these communities.” (Defence counsel)

Imposing conditions on Aboriginal people that are realistic, relevant, flexible and adapted to the reality of the offender and his or her community, was mentioned by 29% of participants as a possible strategy for reducing AOJOs. Interestingly, close to 40% of the judges participating in this research mentioned this strategy.

“... we can shorten up the time from charge to disposition, shorten the length of the disposition, and reduce the number of conditions.” (Judge)

“The court should not impose unrealistic terms on offenders and as orders of release, such as no contact or not to drink alcohol if someone is an alcoholic. This sets up people for failure, which leads to more charges of breach of probation.” (Defence counsel)

“... if they miss court do not worry and get them to come to court the next time, make phone calls to find out what happened (be flexible with regards when they fail to attend court).” (Prosecutor)

According to nearly 20% of participants, improving the socio-economic conditions of Aboriginal peoples could also help with reducing AOJOs because it would affect the underlying factors leading to crime.

“Increase job opportunities; expand social and education services; expand community corrections resources; provide treatment for alcohol and drug abuse.” (Prosecutor)

“Bring in plans to get people to court who live in rural communities (especially in cases where we have taken away the drivers’ licenses of offenders); also bring in better housing and social conditions- there are a whole range of issues.” (Judge)

“If you want to reduce crime overall you spend with lavishness on social programs and get tough on crime that you sentence in a way that people will not want to be convicted and participate in crime. You need to address appalling housing in Aboriginal communities and need social work intervention, etc.” (Prosecutor)

Three participants (6.8%) mentioned that the ACW program would also play an important role in reducing AOJOs.

“Upon being released or prior to being released to provide a method to communicate with them through the ACW program, and establish how to reach them to ensure that they would not miss court and not appear, etc. This could be taken on by the ACW program. This would reduce the amount of missed appearances, etc. The ACW program is generally well connected in the communities and the reserves and would know how to get a hold of those individuals, and find out where they are.” (Judge)

“Literacy is very low among these clients, and ACW programs could get involved and explain to the accused (in simple language) what they are signing in terms of conditions. So that the accused can really think about what they are signing and take the orders seriously.” (Defence counsel)

Lastly, participants noted other factors, for example:

“More timely resolution of charges in court, special courts for drug and alcohol abuse cases.” (Judge)

“The courts need to start using Restorative Programs designed by Aboriginal People.” (Judge)

“The figures are skewed because the Police overcharge the offenders i.e., if the individual is on probation and have conditions that they breach, they can be charged with 3 different charges for the same incident. There also needs to be greater ability within the Native communities to oversee the conditions, and there needs to be more community involvement in terms of oversight by elders for counselling, role modeling, etc. The Native communities also need to take ownership of this process.” (Judge)

“Greater enforcement and monitoring, and some type of assistance to the family, and more information about the seriousness of breaching could be provided and if they could incorporate assistance with addictions as part of bail.” (Prosecutor)

6. Conclusion

Failure to comply with a court order—a release or probation order—is considered one of the most frequent AOJOs among accused/offender Aboriginal adults and youth by court officials.

According to the participants, substance abuse and addictions are the factors that contribute the most to AOJOs among Aboriginal individuals. Of the factors related to the justice system, the lack of resources for Aboriginal support programs and services, and enforcement measures are at the top of the list as important factors that contribute to AOJOs.

When asked to indicate who, in carrying out their duties, would be most likely to help reduce the number of AOJOs committed by Aboriginal people, the participants' opinions were divided.

According to the majority of prosecutors, it is the responsibility of the Aboriginal people to avoid AOJOs. In fact, nearly all of the prosecutors noted individual factors (substance abuse and ambivalence/apathy towards the justice system) among the three main factors that contribute to the perpetration of AOJOs. The judges' opinions are considerably different from the prosecutors. For them, those responsible for community programs and services have an essential role to play in reducing AOJOs. Lastly, the defence counsel opinions are divided amongst prosecutors, judges, and those responsible for community programs all being named as those with the most influence for reducing AOJOs.

Participants offered many potentially useful suggestions to help reduce the prevalence of AOJOs. However, for more than half, it seems that reducing AOJOs would require an increase in available resources to monitor, treat and support Aboriginal people engaged in the justice system. Imposing more appropriate sentences, in particular for accused with substance abuse issues, was also mentioned by many participants (including 8 judges). Lastly, implementing programs to improve the socio-economic conditions that are seen as underlying the criminality (for example, poverty, living conditions and unemployment) was mentioned by certain prosecutors and judges as a measure to reduce AOJOs.

As mentioned in the introduction of this report, AOJOs are an important issue for ACW program. The few studies that have been done on the issue of AOJOs among Aboriginal people show it is a complex subject that could have significant social and legal implications. This report offers a preliminary analysis of the perception of court officials on various aspects of AOJOs among Aboriginal people. However, the findings are quite limited, given the small sample size.

This report is one of three studies. The other two reports present the perceptions of courtworkers and ACW program clients on AOJOs committed by Aboriginal people.