

# JUSTICE

## RESEARCH NOTES

### What Is the Relevance of Justice Research and Development in the 1990s?

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**T**he dramatic social, political and economic changes taking place in Canada today bring into question many assumptions about long-held societal values and goals and the legal and other mechanisms that can best serve indi-

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*it is important that... research reports... be shared more widely*

vidual and national aspirations. This complex of forces poses an enormous challenge for the development of fair and equitable justice policies.

The Department of Justice Research and Development Directorate recently undertook a planning exercise that resulted in a comprehensive three-year plan to help the Department meet the demands of the 1990s. Uppermost in this plan was the development and maintenance of a sound information base.

The following excerpts from that planning document illustrate the overall rationale for the research and development program. It will also help to explain why the Department believes it is important that its research reports and the results

of the development activities generated here be shared more widely. A continuing objective is to make these materials available for comment, criticism and use by all Canadians who believe that good information — and, in particular, information obtained from good social science research and demonstration projects — provides a powerful instrument for sensitive and innovative problem solving. That, for example, is one of the major purposes of *Justice Research Notes*.

### Organization of the Policy Research Function

The Research and Development Directorate is responsible for a highly interdependent set of functions, all of which are intended to support and improve the ability of the Department to be innovative and effective in response to challenges and opportunities. The Directorate is responsible for all the social science-based (empirical) research; for the development and evaluation of demonstration projects; for statistical analysis; and, in conjunction with the Canadian Centre for Justice Statistics and the Ministry of the Solicitor General, for the promotion and development

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### IN THIS ISSUE

Justice for Canada's Native People .....	3
Native People – Sentencing Study .....	7
Effects of Pornography .....	9
Responding to Wife Assault .....	11



of justice information systems that can help meet federal and national requirements for empirical data.

## The Relationship between Research and Policy Development

Justice policy analysts must sift through and weigh conflicting viewpoints about the nature and extent of the problems at issue. The solutions proposed can have a significant impact on Canadian society, especially where important pieces of legislation such as the *Criminal Code*, federal government regulations, the *Canadian Charter of Rights and Freedoms*, and the *Divorce Act* are concerned.

Research directly assists policymaking and decisionmaking by:

- ▶ Helping to clarify and clearly articulate the policy issues. This can be achieved by careful analysis of public opinion information and other special surveys that explore public attitudes toward justice issues; social, economic, and demographic trend information; trends in reported and unreported crimes (both

*Justice Research Notes* is produced by the Research and Development Directorate of the Department of Justice. Its purpose is to provide, in summary form, results of projects carried out under the Department's program of research into various areas of justice policy, as well as information and articles on other socio-legal matters.

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nationally and internationally); changes in marriage and divorce rates; trends in the utilization of courts, tribunals and other less formal dispute resolution mechanisms, and so on.

- ▶ Helping to determine the extent and nature of the problem. This can be done by undertaking in-depth empirical research and analysis.
- ▶ Helping to explore policy alternatives (including procedural and legislative policies). This can be achieved by participating in the development and evaluation of experimental projects.

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- ▶ Assisting in the implementation of policy changes by determining costs and benefits of new initiatives.
- ▶ Providing empirical feedback to policymakers and decisionmakers by monitoring and evaluating the impact of policies, legislation, and cost-shared programs, intended and unintended consequences of implementation (and nonimplementation, where applicable); and by providing timely research-based advice on possible modifications.
- ▶ Collaborating with the program evaluation function by ensuring that program evaluation information requirements are taken into account in the data that are generated in the course of the policy development research cycle.

## The Pursuit of Research and Its Application

In sum, the Department of Justice engages in social science policy research to collect new knowledge concerning the workings of the justice system, the nature and extent of the “underlying problem”, and the likely impact and outcomes of various alternatives. Because so little research has been done on the Canadian justice system, and because major gaps exist in national justice statistics (especially in critically important areas such as the courts), the emphasis in this research is usually placed on describing the justice system.

Department of Justice policymakers and decisionmakers use social science research as an instrument of innovative social problem solving. Research is directed at finding and exploiting new opportunities that further the Department’s policy and program objectives. The findings are used to supplement other types of information, such as public opinion polls, traditional legal research, and arguments propounded by lobby groups. ◀

## Justice for Canada’s Native Peoples: What and How Well Are Governments Doing?

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by Phyllis Doherty and Albert Currie,  
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**T**he problems faced by native people in Canada’s justice system have become a highly visible public issue during the past few years. The Royal Commission on the Donald Marshall Jr. Prosecution in Nova Scotia, the Public Inquiry into the Administration of Justice and Aboriginal People in Manitoba, the Public Inquiry into Policing on the Blood Indian Band Reserve in Alberta, the Task Force on the Impact of the Criminal Justice System on Indians and Metis in Alberta, and the recently formed Steering

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Committee on Native Justice Issues in British Columbia — all have brought these problems sharply to the fore.

More than ever, demands by native people for greater self-determination are exerting an influence on the direction of policy and program development in Canada. Shared federal-provincial responsibilities in the justice field, and the pursuit by both levels of government of new and more creative solutions to the problems of native people

and the justice system, have made imperative the sharing of ideas and information about innovative projects and programming.

An important step to address this need was taken at the June 1989 meeting of ministers of justice in Charlottetown when it was proposed that a national inventory be produced of programs, projects, and research on the justice system and native people. It was suggested that further discussions by ministers and senior officials would benefit from an up-to-date listing of Canadian programs, innovative projects, and current and recent research.

This listing, the *National Inventory of Aboriginal Justice Programs, Projects, and Research*, has been prepared by the Department of Justice and is available for distribution. It is hoped that it will facilitate the process of information sharing among provinces and the federal government; further, that it will be of particular value to departmental officials and to researchers, program managers and policy officers at a time when native justice issues are high on the public agenda and when planning is needed to improve the access of indigenous people to the best services that the justice system can provide.

### **Some Experimental Programs**

The more than 250 programs, projects, and research studies included in the inventory bear evidence of a substantial amount of government-sponsored activity in the areas of policing, corrections and aftercare.

In addition, a number of experimental programs have recently been developed to improve access to the justice system and to assure greater fairness of treatment for native people.

Following are three examples.

- ▶ The Department of Justice sponsored the pilot phase of an experimental project developed by Legal Aid Manitoba using resident paralegal workers of aboriginal origin in remote communities. Paralegal workers assist lawyers on the court circuit in case preparation and also provide legal information and other general counselling about the law and legal problems to natives. The project was highly successful in improving the quality of justice in the affected communities, as indicated by the substantial

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increase in the number of family law cases and other healthy indicators coinciding with the presence of the paralegal workers. The project has now been integrated into the core program of Legal Aid Manitoba.

- ▶ The Department of Indian Affairs and Northern Development and the Department of Justice are co-sponsoring a project with the Arctic Public Education and Information Society in the Northwest Territories and the Public Legal Information Society of Newfoundland to develop what is called a "theatre" approach to delivering information to native people in remote communities. This approach is an attempt to provide legal information to people whose cultures are based largely on an oral tradition. A prototype presentation is now nearing completion.
- ▶ The Ministry of the Solicitor General is sponsoring a Community Development Worker Project in Shamattawa, Manitoba. Currently in its preliminary stages, this project

is aimed at developing a strategy for community development across a broad range of justice issues: crime prevention, police-community relations and community corrections.

## Provincial Initiatives

At the provincial level, the inventory highlights a number of programs that attempt to devolve administrative responsibility for justice programs and services to local communities. British Columbia, Saskatchewan, Manitoba and Quebec have developed contractual arrangements with individual Indian bands to deliver "fine option" and "community service order" programs. These are programs in which a presiding judge may, instead of levying a fine, order the offender to perform a community service. The contractual arrangements that have been worked out represent an interesting approach to introducing a measure of local control over the administration of justice while maintaining appropriate and mutually satisfactory links with the mainstream justice system. It is suggested that these programs might be applied in other areas of the justice system.

However, according to the information provided for this inventory, Manitoba is the only jurisdiction that has conducted evaluations of community service order and fine option programs. The only program documentation reported by other jurisdictions appears in annual reports or as financial audits. This is of some concern, because much of the value of experimental projects or innovations to ongoing programs comes from careful evaluations that can furnish solid empirical information about the strengths and weaknesses of new strategies. Full documentation would be valuable not only for program development, but

would also avoid implementation problems for other jurisdictions.

## Exploring Traditional Justice Systems

The inventory lists a number of programs and projects under the headings "Alternative Systems" and "Traditional Systems". Many of these are, in fact, funding mechanisms to allow organizations to explore the concept of traditional native justice systems rather than develop projects per se. Notable exceptions are the following projects, which are attempting to introduce practices rooted in indigenous culture ("customary" practices) into the justice process: Community Justice Committees in Manitoba; the St. Theresa Youth Court Project, also in Manitoba; and the "Tribal Justice System for CATCO"\* study in the Yukon. Because the mainstream justice system exerts such an immediate and powerful effect on the fates of individuals and on safety and security in communities, it is a powerful symbol of community control. Hence, with self-determination high

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on the political agenda today, an important area of research and development clearly involves experimental projects, with thorough evaluations, designed to explore aspects of community justice incorporating contemporary customary practices.

\* Coalition Bands of Teslin, Champagne/Aishihik and Old Crow (CATCO).

## Justice Education and Native People

The inventory contains a number of justice-related education programs designed to prepare native people for assuming a variety of roles within the justice system. This integrated approach represents a major step forward in making the system more responsive to native people. The program of Legal Studies for Aboriginal People, sponsored by the Department of Justice, has been

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evaluated three times since 1977, and the Native Human Justice Program in Saskatchewan is currently being evaluated.

This education approach appears to be widespread in many parts of Canada. The effectiveness of the objectives of the various programs and their cumulative impact are of major interest for planning and development at the national level.

## Evaluations and Basic Research Still Needed

As noted earlier, preparation of this inventory revealed a marked absence of program and project evaluations. These are urgently needed to determine what does and what does not work in this complex field.

Until recently, there has been a notable lack of basic research in Canada to support the development of well-focused experimental

projects and to inform the policymaking process. (Within the past year, several research projects on crime patterns and the use of customary practices to resolve disputes have begun, but results are not yet available.) As a consequence, there is no solid knowledge base to define, properly and reliably, the nature of aboriginal justice problems such as urban crime, the retention and application of customary law, the range of community diversity and needs, the meaning and causes of the disproportionate numbers of native people in conflict with the law, and the incidence and types of crime among native people.

## The Inventory as a Working Tool

As resources permit, the inventory will be updated by the Department. It has been well received and is proving to be a valuable tool for a broad variety of people working in the field of aboriginal justice: practitioners, policy officers, program managers and researchers, as well as organizations involved in funding special projects. In addition to its descriptive material, the inventory contains the names and addresses of contact persons and the titles of program reviews and evaluations, which should facilitate professional contacts and lead to a broader diffusion of information about current activities in the field. ◀

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*National Inventory of Aboriginal Justice Programs, Projects, and Research.* May 1990. Research Section, Department of Justice. For copies, contact: Research Section, Department of Justice Canada, Ottawa K1A 0H8. (613) 957-9632.

## Sentencing: Are Native People Getting a Fair Deal?

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**A** recent study commissioned by the Department of Justice on the comparative treatment of native and non-native people in sentencing by the courts questions the findings of existing studies and calls for more research on which to base firm conclusions.

The study, by G.S. Clark and Associates, found data to suggest that in terms of the outcome of their cases and length of sentence, native people in Canada are not treated more severely than are non-native people. The report generally agrees with this view on the basis of available evidence, but it maintains that much more broadly based research is needed on sentencing

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disparities before reliable conclusions can be drawn. The report also provides a suggested framework for such a study.

The literature reviewed for the study included both Canadian and international materials (in which minority and nonminority groups were compared) and covered both empirical research and theoretical approaches to sentencing disparities.

The report points out that although a number of Canadian studies and at least one Australian study state that native people appear not to be discriminated against in the sentencing process, other Canadian studies suggest otherwise. In Winnipeg, for example, it was found that native people were fined more frequently than were other offenders for regulatory offences, and that in British Columbia they were acquitted less frequently and found guilty more often than were other offenders for summary conviction offences. In the latter instance, it should be noted, the reverse was found to be true when offenders had no prior record.

### More Study Needed of Sentencing Patterns

Several studies examined in the review stressed that in attempting to understand sentencing patterns it is important to take into account the context within which sentencing occurs. Certain U.S. and Canadian studies, for example, indicated that judicial decisionmaking varies according to the size of the local minority and the degree of urbanization of the court catchment area.

On the whole, the data contained in the studies reviewed do not support the thesis that native offenders are sentenced more harshly than other offenders. However, the findings are based, in some instances, on incomplete data sets and inconsistent methodological approaches. More thorough research is needed.

The report suggests a framework for the study of sentencing disparities, based on a series of decision points in the justice process incorporating police data, court data and corrections data. The model accounts for structural factors such as community type, and process factors such as the variables encountered in judicial decision-making.



## Effectiveness of Sentencing Options

The report reviews a range of sentencing option programs in various provinces. There are two kinds of universal programs providing services to native communities: province-wide programs designed to serve native and non-native clients alike, such as the court fine option program in Saskatchewan; and hybrid programs that involve provision-of-service contracts with native communities. These introduce alternatives and a degree of local control in the sentencing process. Examples are the court fine option program, the community service orders program, and the youth justice committees in Manitoba.

Lack of information about the extent of native people's use of the province-wide programs precluded any real assessment in the review of their effectiveness. However, practitioners in the field suggested that the most serious problem for native people in conflict with the law was accessibility to the programs. Generally, practitioners viewed the hybrid programs operated by native communities as being successful, although there have been few program evaluations.

## A Twofold Task

Although the report concurs that there is some indication that native people are not treated more severely in the sentencing process, it notes that the evidence on sentencing patterns is limited and is therefore inconclusive. To resolve this issue, which takes on some urgency given the recurring questions about alleged disparities, more research is needed that addresses native and non-native comparisons in all major components of the sentencing process.

The report maintains, in addition, that more detailed information is needed about the ways in which particular elements of the sentencing process affect native people. This will provide valuable information for determining which sentencing option programs would be of greatest benefit to native communities in Canada. ◀

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*Sentencing Patterns and Sentencing Options Relating to Aboriginal Offenders*, by Scott Clark, G.S. Clark and Associates Ltd. Working Document. WD1990 10a. Research Section, Department of Justice. For copies, contact: Research Section, Department of Justice Canada, Ottawa K1A 0H8. (613) 957-9632.



# Studies Examine Social and Psychological Effects of Pornography

by John Fleischman  
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**P**ornography and its attendant effects have been of concern to the federal government for some time, and two major federally appointed committees have looked at this issue.

In 1980, the ministers of Justice and Health and Welfare established the Committee on Sexual Offences Against Children And Youths — the “Badgley Committee” — which made numerous recommendations on pornography involving children.

In 1983, the Minister of Justice appointed the Special Committee on Pornography and Prostitution — the “Fraser Committee” — which recommended legislative, social and educational action on pornography.

Both committees identified pornography as an issue of special concern to women because, according to their investigations, it is mainly women who are “used”, in an exploitive sense, as models in photographs or as actors in films. Some social scientists have claimed that there is a link between the viewing of certain types of pornography and actual acts of violence against women.

In support of Bill C-54, the proposed 1987 legislative amendments on pornography, Barry Leighton prepared Part 1 of a study entitled *A Guide to the Social Science Evidence on the Effects of Pornography*. His research covered the period

from 1970 to 1987 and was updated (Part 2) by Augustine Brannigan of the University of Calgary. The results were published by the Department in 1990 as a working document.

## Objectives and Approach of the Research

Part 1 is a synthesis of selected empirical social science evidence that addresses the link between pornography and presumed harmful effects. The review of research is restricted to North American studies conducted since 1970. Selected for comment are those cited most frequently in the literature as landmark studies. The review is comprehensive but not exhaustive.

The focus of the report is mainly on the impact of pornography on adult males, particularly the sexual aggression they may exhibit

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toward adult females. All relevant research is described, whether or not the findings support a link between pornography and harmful effects.

The report is designed to be used by those having little or no background in social science research. Accordingly, a pornography classification system used by many social scientists is provided, along with a note on the variety of ways to logically link pornography with its effects, a catalogue of current theories of how these links are developed, and a brief review of the merits and problems associated with this method.

## Findings on Effects of Nonviolent Pornography (Part 1)

► *Effects on behaviour.* On balance, the research findings on the effect of nonviolent pornography on consumers are mixed or inconclusive. Although there is evidence that, under certain laboratory conditions, nonviolent pornography has some short-term deleterious effects on some consumers, there is also evidence that under similar conditions it can have a cathartic effect. There is also mixed evidence about the relationship of changes in pornography legislation to changes in criminal behaviour — that is, sexual assaults. The research shows that criminal behaviour is linked to broader cultural and social factors.

► *Effects on attitudes.* Much of the laboratory research in this study found little effect of nonviolent pornography on laboratory aggression. One attitudinal change noted is that after viewing idealized actors and actresses, respondents often found their own partners less attractive.

## Findings on Effects of Violent Pornography (Part 1)

Violent pornography is defined as that which is tangible, identifiable and specific, as opposed to implied.

► *Effects on behaviour.* In general, laboratory research that examined the effects on men of sexually explicit violent pornography concluded that there are significant deleterious effects as indicated by increased aggression against women, but that it is the violent component of the pornography that generates this effect. Violence appears to cause the laboratory aggression; pornography is the vehicle. Other research on sex

offenders, such as rapists, suggests that explicit pornography does not play a causal role in the offence.

► *Effects on attitudes.* The main laboratory effect of violent pornography on male attitudes was to reinforce and strengthen already existing negative attitudes toward sexual aggression against females. The research suggests that for violent pornography to have an effect on male attitudes toward rape, the response of the female victim must be depicted as positive or pleasurable.

## Impact Is Mainly on Attitudes

The Brannigan update (1988-1989), Part 2 of the report, examines recent studies on the impact of violent pornography on aggressive behaviour. The report confirms that the psychological harm arising from pornography is mainly attitudinal and appears to result in aggressive behaviour very rarely, except in those men already predisposed to view women negatively. Little evidence was found that would suggest a relationship between the circulation of pornography and the rates of sexual aggression/rape in different countries. ◀

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*A Guide to the Social Science Evidence on the Effects of Pornography.* (Part 1), Barry Leighton. (Part 2), Augustine Brannigan. Working Document. WD1990 8a. Research Section, Department of Justice. For copies, contact: Research Section, Department of Justice Canada, Ottawa K1A 0H8 (613) 957-9632.

# In Search of a More Effective Response to the Problems of Wife Assault

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by **John Fleischman**  
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**T**he role of the criminal justice system in dealing with wife assault has been scrutinized over the past two decades.

In the 1970s, innovative police departments began to experiment with domestic assault crisis teams whose mandate was to be sensitive to the concerns and needs of victims. In the late

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***many women who are battered do not want to have their case proceed through court to conviction and sentencing***

1970s and early 1980s, women's groups pressed governments to emphasize the criminal nature of wife assault and to rely on charges rather than attempt to mediate disputes. In 1982, the federal Solicitor General urged Canadian police chiefs to adopt aggressive charging policies in wife assault cases. Since then, all provinces have adopted such policies. Nevertheless, problems have continued.

Recent experiences suggest that many women who are battered do not want to have their case proceed through court to conviction and sentencing. In addition, domestic assault cases have been added to the backlog of cases awaiting court. A new search for creative ways to intervene in wife assault cases has begun.

## The Department Launches a New Study

To help address concerns about the efficacy of existing policies and programs within the criminal justice system, the Department of Justice commissioned a study by independent consultants Linda MacLeod and Cheryl Picard. Their report, *Toward a More Effective Criminal Justice Response to Wife Assault*, was published as a working document in November 1990. Following were the objectives of the study.

- ▶ To clarify the experiences of battered women within the criminal justice system and identify their needs.
- ▶ To identify the experiences and concerns of police, crown attorneys, defence lawyers, judges, and other front-line health and social service workers.
- ▶ To identify a range of ways in which the justice system can intervene to reduce the impact and incidence of wife assault.

Data for the study were gathered from several sources. A preliminary assessment of the issues was made from discussions with key informants, a literature review, and proceedings from relevant conferences. Interviews were held with Canadian authorities as well as with women who had been battered. Experts were also contacted in the United States. Finally, three full-day focus-group discussions were held with people from different sectors of the justice system, including social service workers, academics, and victims themselves.

Issues of particular interest to the Department of Justice included the recent charging policies adopted by police, and the use of mediation of disputes and other nonadversarial approaches. Because of the Department's ongoing

evaluation of mandatory charging practices it was felt that the study should focus on post-charge rather than precharge approaches.

## Findings of the Study

- ▶ According to victims and social service workers, women's ambivalence toward the justice system may be a function of the fact that, although justice services offer them one of the few opportunities they have for protection, these same services reduce their ability to devise their own solutions.
- ▶ Research indicates that since more aggressive charging and prosecution policies have come into effect, criminal justice intervention *is* reducing violence.
- ▶ A number of alternatives to the criminal justice system have been attempted in Canada and the United States. Mediation was one alternative discussed in the study. It was found to be a controversial measure that raised issues of power, protection, autonomy and credibility. There was little agreement about its benefits in these cases.
- ▶ Although no specific solutions were found that would point the way to more creative intervention by the justice system in situations of wife assault, some suggestions were made. These included the following recommendations.

Women should be provided with clear, honest information about their options, including benefits and pitfalls.

Advocates for women should be available from the moment police are called in.

Men should be removed from the home, not the women and children.

Judges should be better trained to understand the complexity of wife assault.

More counselling programs are needed for children living in homes in which women are battered.

Lawyers should be further sensitized to the needs and experiences of battered women.

## A Shift Away from Criminal Justice Intervention

In sum, this study provided evidence that intervention approaches are shifting in the area of wife assault. In some provinces this shift is noticeably away from an earlier emphasis on criminal justice intervention. Across the country there is considerable debate about the effectiveness of the police departments' charging policies and a concomitant, renewed emphasis on nonadversarial intervention.



*Toward a More Effective Criminal Justice Response to Wife Assault: Exploring the Limits and Potential of Effective Intervention*, by Linda MacLeod and Cheryl Picard. Working Document. WD1990 1a. Research Section, Department of Justice. For copies, contact: Research Section, Department of Justice Canada, Ottawa K1A 0H8. (613) 957-9632.