JUSTICE
RESEARCH NOTES

Justice for the James Bay Cree

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The Cree of northern Quebec have embarked on a large-scale project to examine all facets of the administration of justice in their communities and to shape new polices and programs that will meet their particular needs.

The project, called the *Cree Justice Initiative,* is a joint undertaking of the Grand Council of the Crees (of Quebec) and the Cree Regional Authority, both based in the community of Nemaska. It is a three-phase project, starting with research in nine James Bay communities on the nature of justice problems and people's responses to them, policing and resolution of disputes, and the role of traditional Cree beliefs and practices of social control.

The research findings point to the necessity for an autonomous Cree justice system and show how the breakdown of family, kinship, and community authority and the continuing problem of alcohol consumption underlie many of the justice issues arising in the James Bay communities.

Recommendations are made to the Cree leadership and the communities for consideration in the second phase of the project, focussing the proposals at the community level. The third phase is to be the development of pilot projects in the nine James Bay Cree communities: Whapmagoostui, Wemindji, Eastmain, Waskaganish, Chisasibli, Nemaska, Waswanipi, Mistissini, and Ouje-Bougoumou.

Focus and Conduct of the Research

The research was commissioned by the two Cree organizations and funded by the Department of Justice Canada, the Ministry of the Solicitor General, and the Department of Indian Affairs and Northern Development. I assumed overall responsibility for the three components of the study and carried out the first, with Jean-Paul Brodeur and Roger McDonnell taking charge of the second and third, respectively. The following are the three study areas:

- *Communities, Crime, and Order* — the nature and scope of justice problems, the role of the communities in the genesis and continuation of problems, the formal and informal responses to crime and disorder, and the needs and aspirations of the communities in the administration of justice;
- *Policing and Alternative Dispute Resolution* — current aboriginal policing issues such as training, human resources, accountability, assessment, roles and functions, regionalization, police governance, and alternative dispute resolution and sentencing; and

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IN THIS ISSUE

Department of Justice Canada Ministère de la Justice Canada
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▲ *Customary Beliefs and Practices* — the form and retention of customary practices of social control, and their relevance, adoption, or adaptation to contemporary Cree society and social life.

Field work was carried out from February 1990 to July 1991 by principal investigators and Yves Leguerrier; two of the investigators lived in each of the communities for extended periods. Research methodologies included collection of data from police, probation, court, and youth protection records; interviews and questionnaires involving police and justice personnel; interviews with 350 Cree community members; analyses of secondary data; literature reviews; collection and translation into English of tapes and documents about myths and legends as well as proceedings of community discussion groups; and analyses of historical accounts.

Need for a Cree Justice System

▲ *Communities, Crime, and Order.* This research documented considerable variance from what is reported to the police to what is officially recorded, from what is charged to what proceeds to court. The level of what these communities "absorb" by way of acts of crime and disorder is much higher, for example, than that in Val d'Or, the principal urban centre where the Cree go to Court. This presents problems for the communities, with the erosion of traditional practices of social control and the absence of new structures or responses.

Interpersonal offences were found to be the single most common type of reported offence and the majority of these involved people who are closely related and where women are most often the victims. Only a small proportion of such offences is officially recorded by police, and recommendations for charging are low. The characteristics of offenders as reflected in official occurrence reports mirror those elsewhere: these individuals are most commonly single males between the ages of 17 and 25 who are irregularly employed, have few skills, and have had many contacts with the justice system. However, the actual distribution of such offences is much wider than official records suggest: most offences in general are alcohol-related, though most property offences are *not.*

The incidence of individuals repeating an offence is a serious problem. For example, 61 per cent of adults appearing in court had prior court records; 80 per cent of offences recorded by police for 1989 had been committed by individuals who had previous police contacts; 40 per cent of adult court offenders repeated an offence within a four-year period; and one offender had 41 breaches of probation over a ten-year period. This high incidence of repeat offending means that the same sentences tend to be given over and over again: judges have a lack of sentencing alternatives and communities on the whole have become apathetic. The situation

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is frustrating both for communities and for criminal justice personnel — the former because the same individuals continue to cause problems, and the latter because the same people continue to appear in court. Young people come before the court primarily for property offences (breaking and entering) and adults for interpersonal offences. Virtually all the accused are represented by counsel, and penalties are similar to or more lenient than elsewhere in Canada or Quebec. As in other jurisdictions, the severity of the sentence is based on the number of counts, the seriousness of the offences, and the prior record.

A particular concern of the Cree communities is the time required for processing and for disposition of cases. Processing was found to be slow; for example, over one half of youth cases and one third of adult cases took six months or more from the time of first offence to first appearance. The people surveyed indicated that they believe sentences are too lenient and offenders are not taking the criminal justice system or the dispositions seriously, though they exhibited little knowledge or understanding of the processes of the system.

Community variations in geography, size, resources, volume of certain offences, offender characteristics, and the formal justice response make a "standardized" approach difficult. Communities want a Cree justice system to deal with the majority of offences, but they want to retain the Itinerant Courts for serious offences. In general, people want a Cree system to be fair and objective and not simply a reflection — in effect, an extension — of the local power elite.

▲ *Policing and Alternative Dispute Resolution.* The findings here revealed a shortage of human resources to provide 24-hour policing; lack of career prospects for Cree police; difficulties in policing one's kin and community; lack of support for police from band councils and communities; lack of police accountability; little coordination among Cree police and between Cree police forces and other police forces; interrupted police training courses; and lack of community input into policing policy.

The perceptions of the seriousness of offences differed for Cree police from those on non-aboriginal police. In part, this may reflect the range and volume of the communities' non-policing demands on their forces, demands occasioned by the lack of clarity about the role and function of police.

The researcher cautions that traditional means of resolving disputes may be too time-consuming or in fact not feasible. In a series of recommendations on policing and alternative dispute resolution, he proposes that in using alternative ways there should be no recourse to an external authority, as such recourse would only add complexity. He also suggests that the reward concept of restorative justice in Cree communities should be examined, as fines and probation dispositions lack credibility.

▲ *Customary Beliefs and Practices.* The report advances the following major considerations to assist in understanding and assessing the value of traditional practices to contemporary Cree society. The rules in traditional Cree society were found to be age and gender specific, and their strength was in unspoken practices associated with them. Rules were not held in common — that is, they did not apply equally to everyone. Contributions to camp (or hunting group) well-being were shared according to need and not according to individual status; the great hunter, for example, did not get everything and the poor hunter nothing.

In traditional communities, learning was based on imitating practices of older people of the

same gender, and influence and authority were organized around age — that is, older and younger — and around differences between males and females. Deviations from these rules were dealt with in a variety of ways, such as suggestions, teasing, or by example, but rarely did this involve giving direct orders. Social influence was narrow in its scope and application and it was not community or society wide.

The major finding of this research was that all traditional practices have been weakened by the effects of wage labour, the education system, sedentary living and general inactivity in communities, mass communication, and the changing roles of men and women.

Recommendations for Cree Leadership and Communities

The recommendations in the final report of this project are meant to give direction only and are in no way intended to be binding. The major assumptions on which the recommendations were fashioned are these: changes to a justice system do not necessarily solve all justice problems in communities; many problems are interpersonal and between relatives and are not conducive to formal processing; and "recipe" solutions may reduce the ability of communities to understand and respond more effectively to their own justice problems.

The recommendations take into account the size and geography of communities and, as noted earlier, the necessity for an impartial Cree justice system, and the fact that many justice problems stem from the breakdown of family, kinship, and community authority and the deleterious effect of alcohol consumption. Several recommendations are directed to policing, because there was a sense that the Cree could address some of these issues over the short term, whereas others requiring more complicated structures may take longer to develop and implement. The following are some of the major recommendations.

▲ *Policing.* The main recommendations for the police and policing include the need for an increase in human resources; uninterrupted training for police officers; periods of probation for police; integration of the Cree constables into a cohesive and unified police force; establishment of a police coordinator function; increase in career prospects; parity with other police forces; full responsibility for policing Category A lands (those lands over which the Cree have complete jurisdiction under the 1977 James Bay and Northern Quebec Agreement); training select officers to be police managers; and granting Cree police the tools and jurisdiction necessary to deal effectively with alcohol contraband. It is also recommended that consideration be given to setting up a police training facility with other Quebec First Nations peoples.

▲ *Structures.* Various structures are proposed to provide "layers" to diffuse conflict between people, to deal with the majority of crime and disorder problems, and to perform several justice functions. It is suggested that communities should consider implementing a community relations officer position whereby the individual selected would act as messenger, negotiator, and mediator between individuals. The creation of Community Justice Authorities (CJA) is also recommended to provide a justice of the peace function; to hear criminal, civil, and family matters of limited seriousness; and to conduct annual police performance assessments. The members of the CJA would be selected by the Cree communities and their authority and jurisdiction would be determined by community members. The establishment of a coastal and lay circuit court is proposed to hear cases not resolvable at the local level. It is also recommended

that the itinerant courts be retained, with some changes, to hear serious offences which the communities feel would be too difficult to handle locally or regionally.

▲ *Disposition of Cases.* New options for disposition of cases are recommended for local, circuit, and itinerant court structures. These include bush programs, whereby offenders may be sent out of the community in the company of hunters and trappers; community and external counselling and treatment; banishment from the community for rehabilitative purposes; and skills training. Also recommended are a form of priority prosecution for repeat offences, whereby decisions are made about the timing of prosecution of selected offenders, and the investigation of intermediate sanctions — a new wave of activities designed to keep people out of prison. In all these instances, the investigators felt that it is the Cree communities which must decide on how to respond, in both the short and the long term.

▲ *The Cree Communities.* The report emphasizes that full involvement of the Cree communities is the foundation for local justice systems. It suggests that communities should be responsible for developing criteria for the selection and training of police, social workers, field personnel of the National Native Alcohol and Drug Abuse Program, community liaison officers, members of the Community Justice Authorities, and others in positions of responsibility for justice. Communities must also be involved in selecting member from the Community Justice Authorities for the inland and coastal circuit courts. In addition, communities must be responsible for crime prevention activities, for abiding by the Charter (proposed in the report) on policing matters, for assisting in the creation of victim services, and for participating in workshops on justice. It is also recommended that band councils undertake a massive public education campaign on matters relating to policing.

▲ *General Recommendations.* It is proposed that police and other community service and administrative functions should be integrated into one facility to provide a more comprehensive service and that the criteria for the selection and training of police officers and social workers should be submitted to the responsible training institutions. Judges and personnel of the Itinerant Court, it is suggested, should speak English fluently, legal education should be provided in schools, and all criminal justice personnel who serve the Cree communities should have the provision of some community legal education as part of their jobs.

Next Stages of the Cree Justice Initiative

The research has clearly set the stage for the next two phases of the Cree Justice Initiative, which involve focussing the proposals at the community level and developing pilot projects. Both the Cree leadership and the communities will be using the findings and recommendations as a basis for their discussions about the approaches, activities, and structures they wish to pursue in developing new policies and programs. These deliberations will be conducted in special community workshops and meetings, as well as in the ongoing activities of the Grand Council of the Crees (of Quebec) and the Cree Regional Authority. If adopted, some of the recommendations, such as those relating to policing and the Itinerant Courts, may be implemented very quickly. Others, such as the Community Justice Authorities, the coastal and inland lay circuit courts, and sentencing reform, may require further discussion.

On moving toward the next stages, the report recommends that the Cree leadership and communities establish a detailed implementation schedule to provide a measure of what has been accomplished and what remains to be done. It also recommends that the Cree appoint a Steering Committee for the Reform of Justice to monitor the implementation of reform.

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Justice for the Cree: Final Report. by Carol LaPrairie, Jean-Paul Brodeur, and Robert McDonnell. Cree Regional Authority, Nemaska, Quebec 1991. (Available from: Cree Regional Authority, Nemaska, QC JOY 2B0; telephone 819-673-2600.)

Gathering New Data on Mentally Ill Offenders

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A new national data base has been developed from a Department of Justice study that is providing first-time information on a large group of people held for mental health reasons under *Criminal Code* authority.

The study was conducted across Canada over three years (1988-90) and findings are contained in the Department's 1992 Working Document, *Canadian Data Base: Patients Held on Lieutenant-Governors' Warrants.*

Policy Development and Changes in Attitudes

The research grew out of the 1977 report of the Law Reform Commission of Canada, *Mental Disorder in the Criminal Process,* which strongly urged that basic data be kept to guide the process of procedural and legislative changes affecting the mentally disordered accused. This issue was taken up again by the 1984 Mental Disorder Project, part of the Criminal Law Review of the Department of Justice Canada, which noted that clear and accurate data are essential to the rational development of criminal policy toward the mentally ill, and to encourage changes in attitudes to ward mentally ill offenders.

In 1985, the Department of Justice agreed to explore the possibility of establishing a nationwide data base for patients under Lieutenant-Governors' Warrants. This was done in concert with provincial Boards of Review and with Directors of Mental Health from across the country.

The three-year longitudinal study, conducted out of the Pinel Institute in Montreal, brought together data under several categories relating to the warrant detention process — caseflow and caseloads, case profiles, case histories, and outcomes — to establish how many detainees there were, how long they were kept, and what was done with them.

Secretaries of the nine review boards in Canada were trained to fill out forms relating to different stages in the detention process. For each case and at each stage, data were coded and sent to the Pinel Institute, where they were consolidated and analyzed before being returned to the boards. This method ensured data confidentiality.

Procedural Variations from Province to Province

The study found an average of 1,100 detainees on Lieutenant-Governors' warrants in each of the three years studied: 1,007 in 1988, 1,120 in 1989, and 1,156 in 1990. Approximately 250 new patients entered the system each year and about the same number left it. Most patients

(64 per cent) who received a warrant were diagnosed as suffering from schizophrenia. More than 30 per cent had allegedly committed a homicide, 17 per cent had attempted murder, and another 24 per cent were charged with assault.

Patients found unfit to stand trial were held on warrants for an average of 8.6 months. Times varied considerably from province to province. Patients found not guilty by reason of insanity were held on warrants for an average of 53 months. Again, time on warrant varied from province to province. The severity of the alleged offence was the only variable that related to the length of detention.

Researchers compared detainees in the two largest provinces — Quebec and Ontario. Quebec's patients are often diagnosed as "psychotic" and "mentally retarded", while those in Ontario are often diagnosed as having "a personality disorder." Ontario patients have a longer criminal background, commit more serious offences, and spend longer on warrant than their Quebec counterparts.

Importance of the Data for Planning and Research

The implications of the data for both legal and social research are considerable. The study provides, for the first time, important descriptive information about mentally disordered persons detained by law. Variations among provinces in the type of patients detained and procedures used to detain them are considerable.

The timing of the study has been ideal to provide before-and-after data relating to the recent Criminal Code amendments on mental disorder (Bill C-30, February 4, 1992). It will now be possible to assess many of the effects of this new and important legislation. Provinces will be able to use much of the data for their own internal planning and administration. For many, this is the first opportunity to have provincial data on this population.

Because of the importance of this material, the work of data collection has not been stopped but has been transferred to the Canadian Centre for Justice Statistics. The ongoing data base will provide much-needed information for research, policy development, and planning in this field.

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Canadian Data Base: Patients Held on Lieutenant-Governors' Warrants, by Sheilah Hodgins, Pinel Institute, Montreal, and Christopher Webster, Clarke Institute of Psychiatry, Toronto. Department of Justice Canada, Working Document [WD1992-6E], March 1992.

London Study Examines Police Charging Policy as a Deterrent to Wife Assault

by Lorri Biesenthal
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Wife assault victims and police officers in London, Ontario, surveyed for a pilot study by the London Family Court Clinic of the effects of a new mandatory police charging policy, reported that domestic violence decreased and the number of reported assaults declined after the policy was implemented in 1981.

The other findings of the study, published in 1991, suggest, however, that full-scale studies are needed in other Canadian communities to confirm whether or not police charging policies do in fact deter domestic violence.

Government Action

Funding for the London study, the first of its kind in Canada, was provided by the federal

Department of Justice and Ministry of the Solicitor General, and the Ontario Ministry of the Solicitor General.

The study follows closely on the recent commitment by the federal and provincial governments to address the problems of wife assault, with the overall goal of improving the awareness and sensitivity of law enforcement officials — and the public in general — to the plight of abused women.

At the federal government level, a four-year Federal Family Violence Initiative has been under way since 1990. In some local jurisdictions, clear policy directives have been issued — as in London — which stipulate that police should lay charges in cases of wife assault when they have reasonable grounds to believe that an assault has taken place. In other jurisdictions, Crown attorneys have been directed to prosecute wife assault cases with the same vigour as other criminal proceedings against violent offenders.

Participants in the London Survey

The researchers surveyed 90 London-area women who had been physically abused by their partners in 1988 or 1989. As well, 133 police officers were asked for their opinions on the policy that requires them to lay charges in cases of wife assault rather than directing the victim to lay a private information charge herself.

The cases selected for the London study fell into the following three categories, depending on the level of police response to an alleged assault:

- ▲ Police intervention — charges laid (52 cases);
- ▲ Police intervention — no charges laid (14 cases);
- ▲ No police intervention — no charges laid (24 cases).

The women participants were selected in the following manner: 32 responded to a written request from the London Police Force seeking participants for a study assessing the quality of service offered by the force and other community agencies; 33 responded to newspaper advertisements requesting volunteers for an interview related to their experience with the criminal justice system; 17 were referred by community agencies that provide services for battered women; six responded to a flyer randomly sent to 50,000 London residences requesting volunteers for an interview related to their experience with the criminal justice system; one was referred by a family doctor who was aware of the study; and one was referred from an unknown source.

In addition to the survey of individual police officers to assess their attitudes toward the importance and impact of the 1981 charging policy, the researchers also reviewed police data to determine the number of charges laid in the 90 cases covered by the study.

More Police Charges, Fewer Incidents of Assault

The findings indicate that the results of the implementation of London's charging policy were somewhat climactic. Between 1979 (before the policy directive) and 1990, the rate of charging increased from 2.7 per cent to 89.9 per cent of occurrences of wife assault. Occurrences numbered 444 in 1979 and 443 in 1983, and dropped dramatically to 358 in 1990.

Over a four-year period between 1987 and 1990, officers were significantly less inclined to leave the responsibility for laying charges with victims. The change was paralleled by positive police attitudes and the perceived support for the policy from victims and the courts.

The trend in court response to the charges laid was evidenced by the fact that fewer cases were being dismissed or withdrawn than in previous years. In addition, increased charging led to a marked rise in the number of more serious court sentences, such as probation and incarceration, especially in comparison with victim-laid charges.

Although the victims reported that the police intervention led to a decrease in domestic violence, their fear of violence continued. During the court process, about half of the victims remained concerned about their safety and a quarter were in fact threatened by the accused. Many victims (42 per cent) indicated a need for greater awareness of their plight in the community through public education. More than a quarter (28 per cent) suggested that the police should provide more information on the court process and available community services.

Recommendations and Implications of the Research

The following are the principal recommendations and implications of the study.

▲ Future research should be funded by appropriate federal and provincial government ministries (a) to examine police response in other Canadian communities similar to London in size and population; (b) to replicate the London study with a larger sample to compare various forms of police intervention; (c) to conduct another study that would look more closely at the problems of wife assault among visible minorities; and (d) to assess the impact on all parties of court decision-making in wife assault cases.

▲ The study reinforces the importance of public education and a high level of awareness on the part of front-line professionals, such as doctors, who deal with abused women.

▲ Police forces should be required to publicize their charging policies on behalf of all victims of violence.

▲ Police charging policies should not be seen as a ready solution or deterrent to wife abuse, even though in this study victims reported a significant reduction in violence since the implementation of the new policy. Many victims reported continuing fear and threats from their partners during the court process.

▲ The community response to victims through the criminal justice system needs to be treated as a coordinated intervention process rather than as the fragmented application of policies.

Ambivalence of Battered Women toward the Justice System

Although the study showed that after the implementation of the police directive the number of occurrences of wife assault dropped sharply, there is no sure way to assume that the drop in occurrence rates was based primarily on the charging policy. The finding only speaks to a need to evaluate whether a mandatory charging policy is a long-term deterrent to wife assault.

In general, abused women have identified the need for social support, reassurance that they are not alone, information on choices available to them, assurances that the violence will stop, and guarantees of their safety.

Women acknowledge the need for programs that will support and encourage them and that will help them find their own solutions. However, their feelings about their need for police intervention are less clear. Although women want and need police protection, it is not certain that they want police to have to press charges. Many battered women do not want

criminal justice involvement in their lives, and they have little faith in the system's ability to stop violence.

Women's ambivalence toward the justice system may be partially due to the fact that although it provides one of the few opportunities available to them for protection, it also limits their ability to devise their own solutions.

The Need for Further Research

The relevance of the findings of the London study may be limited for three reasons: first, the progressive nature of the London Police Force and the coordinated community response to violence against women in London are considered unique; second, the study used a very small sample; and third, of the 90 participants, only a small number were women from visible minority groups. As yet, the impact of mandatory charging policies in cases of wife assault remains unclear.

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Wife Assault as a Crime: The Perspectives of Victims and Police Officers on a Charging Policy in London, Ontario, from 1980-1990, by Peter Jaffe et al., London Family Court Clinic Inc. Department of Justice Canada, Working Document [WD1991-13A], April 1991.

How the Federal Victim Fine Surcharge is Applied in B.C. Courts.

by Andrea Horton
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A study just completed in British Columbia examines how federal legislation on applying a "victim fine surcharge" is working and recommends ways in which the process, found to vary in its application, might be improved in that province and elsewhere in Canada.

The study, commissioned by the Department of Justice Canada in cooperation with the B.C. Ministry of the Attorney General, grew out of increasing concerns among Canadians about meeting the needs of victims of crime.

These concerns have coincided with the governments' continuing search for ways to reduce expenditures, so the legislation, which provides a new source of revenue for victim programs and services, is particularly relevant. The purpose of the study was to determine how well the legislation is meeting these expectations.

How the Surcharge is Intended to Work

The 1988 legislation — Bill C-89, An Act to Amend the Criminal Code (Victims of Crime) — requires that a sentencing judge impose an added fine on an offender convicted (or discharged) of a crime under one of three federal statutes: the *Criminal Code,* the *Narcotic Control Act,* or Parts III or IV of the *Food and Drugs Act.* The offender must pay the surcharge in addition to carrying out the rest of his or her sentence, though exemption may be granted if the judge finds that paying the surcharge would cause undue hardship.

The legislation also determines the maximum amounts of surcharge that can be ordered. If the sentence is a fine, the maximum is equal to 15 per cent of that fine; if the offender is given a prison sentence or some other type of non-fine sentence, the maximum is $35.

The revenue collected from surcharges is not given directly to individual victims of crime. Instead, the provincial and territorial governments use the revenue to fund various programs and services for victims. Some provinces use surcharge revenue to fund such programs as police-based victim services, emergency shelters for women and children, and sexual assault centres.

Gathering the Data

The study team conducted 108 interviews with key justice system personnel in Victoria, Vancouver, Surrey, and Prince George, including judges, Crown counsel, probation officers, court staff, defence lawyers, police, and victim assistance workers. They also organized telephone interviews with Crown counsel in 21 other centres throughout the province.

The other major part of the study was a review of 1,195 case files of persons who had been convicted of a federal offence or discharged. Files were drawn from the four main study sites and covered the year 1990. The purpose of the review was to determine whether a surcharge was imposed, the type of crime, the type of sentence given, the amount of surcharge ordered against the offender, and whether or not the surcharge was actually paid.

To compare the B.C. experience with that of other jurisdictions, documentation was collected from various sources and telephone interviews were conducted with surcharge administrators in the United States, Australia, and each of the provinces and territories of Canada.

Findings Show Mixed Reactions to Surcharge Legislation

▲ *Variations in Imposing the Surcharge.* The study found that while some judges in British Columbia impose the surcharge in the majority of cases that come before them, others order it only in some of their cases. There were also regional differences. In the four main study sites, a surcharge was imposed in only 10 per cent of cases, while in the 21 smaller centres it was estimated that a surcharge was ordered in 42 per cent of eligible cases.

The study revealed significant differences across the province in the amounts of surcharge imposed. In the four main study sites the average surcharge was $2.06 per convicted case; in the others the average was $8.12.

▲ *Surcharges Associated mainly with Fines.* Judges order an offender to pay a surcharge more frequently when the sentence is a fine compared to a jail term or probation order. In interviews it was learned that many respondents, including at least one judge and several Crown counsel, were not even aware that it was mandatory to order surcharges with non-fine sentences.

▲ *Attitudes of Judges.* Ten of the 15 judges interviewed expressed philosophical objections to the victim fine surcharge. Some judges stated that they do not support the idea of a surcharge because a large number of crimes, such as possession of a restricted drug, do not have a direct victim. Others felt that the surcharge, as a revenue source for the government, turns judges into tax collectors. This perception could be aggravated in B.C. by the fact that surcharge revenue does not go into a special fund for victims and the provincial government does not publicize the victim programs and services that it funds.

▲ *Paying the Surcharge.* The review of case files revealed that if a default order is not attached to the surcharge order, a significant amount of revenue is not collected. A default order states how many days convicted offenders will spend in jail if they do not pay their surcharge. When default orders were used, 76 per cent of offenders paid their surcharges, compared with 53 per cent when they were not used.

▲ *Respondents' Suggestions for Improvement.* Roughly 55 per cent of respondents suggested that judges should be given greater flexibility in deciding when surcharges should be imposed and in what amounts.

Approximately half the respondents, especially Crown counsel, probation officers, and

court staff, felt that the 15 per cent maximum surcharge on fine dispositions was appropriate. On the $35 maximum on non-fine dispositions, 37 per cent of respondents stated that the amount was adequate, although 30 per cent (primarily victim assistance workers, police, and Crown counsel) felt that the amount should be higher.

Slightly less than half the respondents stated that the B.C. government should introduce a provincial victim fine surcharge which would be applied against offenders convicted of provincial offences. Currently, seven provinces and territories have legislation for ordering surcharges against offenders convicted of provincial crimes, such as traffic or parking offences. Victim assistance workers were the strongest supporters of a provincial surcharge, while defence counsel were the least supportive.

Advantages of a Special Victims Fund

The report recommends that a special victims fund be created in British Columbia to receive all surcharge revenues and that the government publicize the programs and services for victims supported by this fund. It is suggested that if judges could see the beneficial programs and services funded out of these revenues, they would be more willing to impose the surcharge. Judges might then feel less like tax collectors. Other provinces, such as New Brunswick, have a separate and "visible" victims fund, and respondents felt that this contributes to judges' willingness to order surcharges. Other provinces and territories which report high revenues are also those in which the government has established a separate victims fund.

The report also recommends that offenders convicted of the most serious crimes, such as murder and assault, be given higher surcharges; that the B.C. government promote collection of the surcharge by communicating regularly with judges in the province on surcharge issues and developments; that individual Crown counsel be more proactive in requesting that judges impose surcharges following convictions; and that Crown counsel encourage the attachment of default conditions on surcharges.

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An Assessment of Victim Fine Surcharge in British Columbia, by Tim Roberts, Focus Consultants, Victoria. Department of Justice Canada, Working Document [WD1992-15E], August 1992.

A Preliminary Investigation into Child Pornography in Canada

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This study attempts to assess the nature and extent of child pornography in Ontario and other selected jurisdictions in Canada.

Data were gathered from several sources. To obtain information about the experiences with child pornography, interviews were conducted with members of "Project P," the joint Ontario Provincial Police-Metropolitan Toronto Police Department Pornography/Hate Literature Unit. Officers from the Metropolitan Toronto Police Departments, Peel Regional Police, and Sûreté du Québec, as well as police forces in Winnipeg, Calgary, Edmonton and British Columbia were interviewed. In addition, officials from Canada Customs and U.S. customs were contacted. Finally, approximately 500 occurrences from

Project P files were reviewed to abstract information on investigations involving child pornography.

Background

For some time the federal government has been considering a law to address child pornography. The purpose of such a law would be to deal with the sexual exploitation of children as well as to make a moral statement regarding the sexual depiction of children in the media. Most Canadians agree that this type of depiction is unacceptable.

There have been very different assessments of the extent and type of child pornography currently available. They range from viewing "Kiddie Porn" as a non-existent issue to viewing it as an epidemic problem.

At present the *Criminal Code* of Canada makes no explicit reference to child pornography. Rather, this material falls into the category of "obscene materials" (section 163) whereby "every one commits an offence who... makes, prints, publishes, distributes, circulates, or has in his possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, phonograph record or other thing whatever". However, legislation dealing specifically with the issue of child pornography is currently being developed.

In the view of the author of this report, legislation in this area would need to address several issues of definition, including what constitutes obscene or pornographic depictions and what is meant by "child".

This research did not develop a definition of child pornography.

Findings Regarding the Extent and Nature of Child Pornography

This study reveals that child pornography is neither professionally made nor commercially available in Canada.

The report states, further, that most makers of child pornography are believed to be pedophiles who use photographs and homemade videos for their own consumption, though police and customs officials believe there are clubs and communication networks among pedophiles. These are difficult to infiltrate.

This study found that very few police officers had encountered child pornography in the course of investigating situations of child sexual abuse. On the public availability of these materials, no officers had personal knowledge or experience of child pornography being available in book stores, video outlets, etc.

During a five-year period (1986-1990), Canada Customs initiated 520 enforcement actions of suspected child pornography. This number represented 1.3 per cent of the total number of enforcement actions during the period.

Summary and Conclusions

The main finding of this report is that child pornography, according to police forces across the country, is not commercially available and is essentially underground. While the volume of child pornography entering Canada cannot be estimated, only 1.3 per cent of enforcement actions by Canadian Customs officials in the last five years have involved child pornography.

Law enforcement officials state that most consumers of child pornography are pedophiles who take photographs or videos of their victims.

Finally, police officers recommended that possession of child pornography should be made a *Criminal Code* offense to facilitate enforcement.

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A Preliminary Investigation into Child Pornography in Canada, by Sharon Moyer, The Research Group, Toronto. Department of Justice Canada, Working Document [WD1992-16E], May 1991.

Charter Rights and the Justice System: Measuring the Need to Know

by Lynne Dee Sproule and Christine Kennedy
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Human rights are considered by many to be central to our culture and the *Canadian Charter of Rights and Freedoms* is often seen as the principal embodiment of those rights. Ten years after the Charter's proclamation in 1982, a Department of Justice study examines how much Canadians know about the Charter and the administration of justice; the social and educational factors that may enhance what is termed "Charter literacy"; and the ways in which governments, schools, and public legal education and information groups can promote understanding of the Charter and its role in protecting human rights.

The researchers, Leroi B. Daniels and Roland Case of the education faculties of the University of British Columbia and Simon Fraser University, show Charter literacy to be a multi-faceted and complex topic. It embraces moral and social as well as legal considerations, and implies not only an understanding of the meaning of the Charter but also a propensity to act in consonance with that understanding. Charter literacy emerges in this study as a potentially powerful tool in efforts to promote and protect human rights in Canada. The research plainly suggests that:

▲ People who are Charter literate are more likely to respect and act in accordance with the rights of others.

▲ The extent to which Canadians lack adequate knowledge of constitutional and human rights or have misperceptions about the workings of the justice system has a negative impact on the fair and efficient administration of justice in Canada.

▲ Educational efforts to promote Charter literacy must address not only people's level of knowledge, but also the ways to enhance their perceptions of the legitimacy of human rights law.

Drawing on an extensive review of the literature, the authors focus on the following issues:

▲ *The concept of Charter literacy* — the desired attitudes toward the Charter and other human rights legislation;

▲ *The current state of Charter literacy* — the degree of Canadians' knowledge about and attitudes toward the Charter and other human rights legislation and the legal system generally, and the demographic and other features of the population that are relevant to an understanding of how to promote Charter literacy;

▲ *The role of education in fostering Charter literacy;* and

▲ *The role of the communications media.*

The Concept of Charter Literacy

The authors use the term "Charter literacy" to denote the ability to understand, appreciate, and act on the rights and obligations protected by the Charter and other human rights legislation.

In their analysis they show that understanding the meaning of the concepts of rights and freedoms, and the moral and legal concepts

embedded in the Charter and other human rights legislation — concepts such as equality, discrimination, and security of the person — also implies a system-related understanding of the meaning of democracy, due process, and the rule of law.

Looking at the *content* of constitutional and statutory provisions on fundamental rights carries with it a need to understand the workings of the law (with all its complexity and weaknesses), especially mechanisms for applying and enforcing rights and knowledge of the consequences of living in societies that respect — or do not respect — basic rights.

People's own *values* and *behaviour* also enter into the equation of Charter literacy — including the degree to which they respect the fundamental values underlying human rights legislation and can critically assess related issues and act in accordance with their reasoned beliefs about rights-related issues. These values and behaviours imply, in the wider context, respect for the values underlying our legal institutions and procedures and the ability to assess systems-related issues and act accordingly.

The Current State of Charter Literacy

The authors provide a preliminary profile of Canadians' understanding and support for the Charter and the law on the basis of the few existing studies that are directly relevant and a number of others which they use for further deductions.

Research pertinent to the meaning and content of the Charter literacy concept leads to these main conclusions:

▲ Canadians have limited knowledge of the Canadian legal system generally.

▲ Many Canadians (one of every three or four) lack adequate knowledge of their constitutional rights.

▲ Non-urban, less formally educated, and younger Canadians are least likely to be Charter literate.

Four conclusions emerge about the valuative and behaviourial components of Charter literacy:

▲ Support for rights varies, depending on the right-holder.

▲ Canadians are sharply divided in their approval of the law.

▲ Knowledge of and attitudes toward the law are interrelated.

▲ Attitudes toward the law may often be the products of uninformed judgments.

As examples of the studies from which these conclusions derive, the authors cite a 1979 study by the Canadian Human Rights Commission which showed that people were more willing to extend rights to homosexuals or people with disabilities than to members of extremist political parties; a 1991 B.C. study which found that high school students were more likely to agree with the Charter in a case involving mobility rights when the right-holder was a Canadian of British origin than when the right-holder was a Canadian of East Indian origin; and a 1990 U.S. study which concluded that among adults, respect for legal institutions and their officials was the major external factor influencing willingness to go along with the law.

The Role of Education in Fostering Charter Literacy

The authors note that there is a considerable body of literature about pedagogical considerations that can be applied to promoting Charter literacy. They quote general works on the acquisition of concepts as well as specific studies of the understanding of justice-related concepts. On the meaning and content components of Charter literacy, they suggest that Charter literacy should imply not only some essential

understandings but more particularly an *absence of misinformation.* (They cite research describing how misperceptions about the workings of the courts are damaging to the administration of justice.)

In considering the valuative and behaviourial components of Charter literacy, the authors say it is erroneous to assume, as many law-related school programs do, that the simple provision of knowledge of the law and the legal system will create respect for the law. They refer to a wide body of literature on educational strategies (emphasizing such aspects of the learning experience as environmental conditions, direct experiences, and rational reflection) for promoting values and the disposition to act according to those values.

The Role of the Communications Media

In discussing the communications media and the implications of their role in promoting Charter literacy, the authors cite research suggesting that the distorted portrayals of the law, frequency of violence, and stereotyping in much television programming do not promote Charter literacy. They say it is not realistic to expect that popular television will be harnessed in educationally positive ways to support Charter literacy, and it may therefore be particularly important to teach viewers to view media messages critically.

Regarding other types of media, the authors believe that the research supports a mix of media approaches targeted to specific audiences (rather than the mass programming "trivial pursuit-type" of information dissemination).

Promoting Charter Literacy Among Targeted Audiences

The authors identify three special categories of Charter literacy "audiences" and the subcategories they believe should be targeted:

(1) Rights holders: individuals whose rights are to be protected. Targeted groups include those particularly vulnerable to having certain of their rights violated — such as women, youth, gays and lesbians, and visible minorities.

(2) Rights respecters: persons with an obligation to respect human rights. Targeted groups include those "legally/morally susceptible" people who, may infringe upon the rights of others.

(3) Rights promoters: individuals in the public eye who have special ethical or legal responsibilities toward the protection of human rights. Targeted groups include those likely to influence public perceptions of and compliance with the law, such as teachers, police and judiciary, and the media.

Recommendations for Further Research and Action

The general paucity of research on Charter literacy, particularly in the Canadian context, points to the need for further work in this field, and the authors present a research framework that reflects the various aspects of Charter literacy developed in the study. Further research should include:

Explication studies that elaborate on the attributes of Charter literacy components and articulate the desired "minimal level of Charter literacy;"

Instrumentation studies to develop a range of field-tested instruments for measuring key Charter-related understanding, attitudes, and behaviour;

Demographic research on the range of features or circumstances of people which can be statistically connected with plausible hypotheses — for example, why people maintain certain attitudes or concepts;

Profile studies, general and targeted (specific Charter literacy audiences and sub-audiences), on people's knowledge of and attitudes toward the Charter, their related behaviour, and their deliberations about the law;

Public legal education and information-focussed studies to enhance the role and efficacy of this process in promoting Charter literacy among various adult audiences — in particular, vulnerable *rights holders,* legally/morally susceptible *rights respecters,* and high-profile *rights promoters;*

Law-related education focussed studies to enhance the role and efficacy of elementary and secondary schools in promoting Charter literacy among youth;

Media-focussed studies to increase the likelihood that the communications media in Canada will have a positive effect on Charter literacy.

In light of the research evidence provided by the study, these proposals clearly warrant further attention.

It should be noted, moreover, that Charter literacy discussions situate the justice system within the broader context of social institutions in general. As such, the area of Charter literacy invites an approach that includes not only the Department of Justice Canada but also other federal departments — such as the Secretary of State of Canada, Multiculturalism and Citizenship — and provincial attorneys-general and ministries of education.

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Charter Literacy and the Administration of Justice in Canada, by Leroi B. Daniels and Roland Case. Department of Justice Canada, Working Document [WD1992-23E], June 1992.

How do Canadian crime rates compare to those of other countries?

According to the 1992 International Crime Survey, Canada has the fourth highest victimization rate among 10 countries participating in the survey. In the year 1991, 28.4 per cent of Canadians experienced at least one of eight crimes measured by the survey. The countries with higher victimization rates were the Netherlands (31.3 per cent), England and Wales (30.2 per cent), and Australia (28.6 per cent).

Crimes of violence

Four per cent of Canadians were victimized by assault or threat of assault in the year 1991. Canada was ranked fourth, behind New Zealand (5.7 per cent), the United States and Australia (5 per cent each). Four per cent of Canadian women were victimized by a sexual incident — the second highest rate among the 10 countries. The victimization rates for both these crimes are reduced by almost one half, however, when assaults are distinguished from threats only and when sexual assaults are distinguished from offensive behaviour.

Sixth highest in murder rate

On the other hand, the Canadian murder rate is relatively low. It has stayed below 3 per 100,000 population for the last 30 years. Interpol data for 1985-86 show that Canada, with a murder rate of 2.3 per 100,000, ranked sixth among the 14 countries participating in the 1989 International Crime Survey. Compared with the

United States, the Canadian rate has been consistently 3.5 to 4 times lower during the last 10 years.

Murder rates (per 100,000 people) of selected countries in 1985-1986:

United States	8.25
Northern Ireland	5.07
France	4.16
Australia	4.05
Belgium	3.35
Canada	2.49
Spain	2.16
Finland	1.77
West Germany	1.48
England	1.25
Switzerland	1.16
Netherlands	1.12
Norway	0.90

SOURCES: 1992 International Crime Survey, INTERPOL International Crime Statistics.

Readers Survey Results

The results of the survey contained in the last issue of *Justice Research Notes* are in. Although the return rate was low, those who responded provided valuable information and some suggestions for future issues.

The overwhelming majority, 98 per cent, of the respondents, rated the publication as either very good or good. The newsletter appears to be attentively read — 29.5 per cent of the respondents indicated that they either pass the issue on to someone else or save various articles for background research. About 62 per cent of the respondents found that the articles were usually or always relevant to their personal or professional work.

The language used in the *Notes* was considered understandable and the length of articles was appropriate for an adequate understanding of the issues.

We wish to thank those who responded to the survey, and we hope that readers find this and subsequent issues as useful and informative as past issues.

Department of Justice Canada — Research Publications Order Form

The following research reports have been described in this issue of *Justice Research Notes.* Please check off the items you would like to receive, and mail a copy of this form, along with your name and address, to: Research Section, Department of Justice Canada, Ottawa K1A 0H8.

☐ *A Preliminary Investigation into Child Pornography in Canada,* by Sharon Moyer, The Research Group, Toronto. Department of Justice Canada, Working Document [WD1992-16E], May 1991.

☐ *Wife Assault as a Crime: The Perspectives of Victims and Police Officers on a Charging Policy in London, Ontario, from 1980-1990,* by Peter Jaffe et al., London Family Court Clinic Inc., Department of Justice Canada, Working Document [WD1991-13A], April 1991.

☐ *An Assessment of Victim Fine Surcharge in British Columbia,* by Tim Roberts, Focus Consultants, Victoria. Department of Justice Canada, Working Document [WD1992-15E], August 1992.

☐ *Canadian Data Base: Patients Held on Lieutenant-Governors' Warrants,* by Sheilah Hodgins, Pinel Institute, Montreal, and Christopher Webster, Clarke Institute of Psychiatry, Toronto. Department of Justice Canada, Working Document [WD1992-6E], March 1992.

☐ *Charter Literacy and the Administration of Justice in Canada,* by Leroi B. Daniels and Roland Case. Department of Justice Canada, Working Document [WD1992-23E], June 1992.

The following item is also available from: Cree Regional Authority, Nemaska, QC J0Y 2B0; telephone (819) 673-2600.

☐ *Justice for the Cree: Final Report,* by Carol LaPrairie, Jean-Paul Brodeur, and Robert McDonnell. Cree Regional Authority, Nemaska, Quebec, 1991.

For further information concerning these or other departmental research documents, please contact the Research Section at: (613) 941-2266.

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