



Fast

FACTS

CANADIAN CENTRE FOR POLICY ALTERNATIVES – MANITOBA

April 23, 2018

Justice system lacking fairness

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Almost half of the people in Manitoba agree there is a problem with the Canadian justice system when it comes to treatment of Indigenous Peoples according to a recent report in the *Winnipeg Free Press* ("Manitobans divided on justice system," April 16, 2018). Like many problems, it's complex and the way to resolution starts with understanding the many issues.

Here at the John Howard Society we work with men in conflict with the law, and the vast majority of the people we work with are Indigenous. We see first-hand that the system doesn't treat everyone fairly for at least three reasons: economic, cultural, and prejudicial.

High rates of un-employment and an inability to secure stable housing lead to greater rates of incarceration for those awaiting trial. When a person is charged with a crime, they are often released on their own recognizance. But if they can't provide an address for where they will live they are more likely to be taken into custody. And once someone is in custody, it's much harder to get out. By this point you need a lawyer to represent you at a bail hearing, you still need an address for where you will live, and there is a legal principle that the accused has to be able to assist in their own defence. I have seen a homeless individual held in custody for almost three weeks for shoplifting less than five dollars' worth of merchandise, unable to get bail or go to trial because he could not properly instruct his lawyer due to addictions and mental health issues.

Two-thirds of the people incarcerated in Manitoba are simply awaiting trial and have not been convicted for the offence they are charged with. The vast majority of those held in pre-trial custody – doing the time before being convicted of the crime – are poor. And at least 70 per cent of those in custody are either First Nations, Inuit, or Métis.

We're pleased to see that the current government plans to make changes to the bail process and take steps to ensure people aren't being held at public expense for longer periods than necessary due to administrative obstacles, such as missing information on application forms. But an expanded use of the Mental Health Court, more support for Legal Aid, and greater resources for the Winnipeg Drug Treatment Court are also needed to address some of the structural issues facing poor people charged with a crime.

Secondly, there are cultural factors at play. The court process and the legal system supporting it is built on Euro/Christian cultural beliefs which are often at odds with and don't take into account Indigenous cultural traditions and practices. Judging an individual by their willingness to engage in direct eye contact, or their use of language, or terms not found in many Indigenous languages, puts First Nations People at a disadvantage in the court system.

there is an alternative.

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Also few Indigenous people are found on juries, raising questions of fairness and whether justice can be served when their voices are not included.

In Manitoba a number of First Nations and Métis communities have created their own justice programs, working together with the courts to allow those charged to be tried, sentenced and supervised within and with the support of their home community. Other community members, as well as the victims, have an opportunity to take part in an a process of exploring the harm that was done, including to the accused, and designing a response or sentence that allows this harm to be addressed in the best interests of everyone. These programs, some of which have been operating for decades, should be expanded and given their own distinct legal authority to practice justice in their own communities, keeping the role of the formal justice system as small and unobtrusive as possible. These programs operate more efficiently and have proven to be effective at addressing victimization and preventing recidivism. They are also rooted in the culture of the communities where they operate.

Finally, in passing sentences, courts have failed to properly account for disadvantages faced by Indigenous Peoples, something they have been called to do by the decision of the Supreme Court in *R. vs Gladue*. This 1999 ruling led to what are called "Gladue Reports," which are specialized pre-sentencing reports submitted to a judge when the person convicted is Indigenous. Gladue Reports are designed to explore the background of the individual, looking at how their personal history and upbringing may have had an impact on their decision to break the law, and consider possible alternative sentences, which might include the use of restorative justice and healing lodges.

However, as Chantell Barker – who is from the Sapotoweyak Cree Nation, a former probation officer and now the community justice development co-ordinator with the Manitoba Southern Chief's Organization – has stated to the

Winnipeg Free Press previously, the risk assessments commonly included as part of the reports completed by probation officers can actually lead to stiffer sentences. This is in direct contradiction to the intent of a Gladue Report.

The John Howard Society of Manitoba is currently exploring the feasibility of creating a Gladue Report writing unit which would contract with Indigenous people trained by the Gladue Court in Ontario to write independent reports for judges in Manitoba. The use of individuals who are not probation officers, who are part of and better understand the culture of the accused, has led to stronger Gladue reporting in Ontario and we hope that it can happen here in Manitoba as well.

We are heartened to hear Manitoba Justice Minister Heather Stefanson say her government is "working hard to improve the delivery of justice in the province." But change can take time. What is needed immediately is a commitment from people at every level of the justice system including those who work for social service agencies, to take concrete and demonstrable steps to increase the level of fairness for all people who are charged with or find themselves the victims of a crime. "What we want for ourselves, we want for others" applies to criminal and social justice equally well.

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References available upon request.